



# IOWA ADMINISTRATIVE BULLETIN

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Pages 901 to 952

## CONTENTS IN THIS ISSUE

Pages 913 to 949 include **ARC 3904B** to **ARC 3926B**

### ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Notice, Customer councils, 10.5, 10.6(3),  
10.7(2) **ARC 3926B** ..... 913
- Filed Emergency After Notice, State contract for  
purchase of airline tickets, 41.5(3) **ARC 3918B** .. 937

### ALL AGENCIES

- Schedule for rule making ..... 904
- Publication procedures ..... 905
- Administrative rules on CD-ROM ..... 905
- Agency identification numbers ..... 911

### BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice, Update for conformity with recent  
legislation and for annual review, amendments  
to chs 1, 2, 4, 7 to 11 **ARC 3919B** ..... 914

### CITATION OF ADMINISTRATIVE RULES ..... 903

### COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

- Notice and Notice Terminated, Approval of  
postsecondary schools, amendments to  
ch 21 **ARC 3921B** ..... 917

### CORRECTIONS DEPARTMENT[201]

- Filed, Community-based corrections  
administration, amendments to ch 40  
**ARC 3911B** ..... 940

### EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

- Notice, Teacher intern license, 14.129  
**ARC 3922B** ..... 918
- Filed, Renewal of licenses,  
amendments to ch 17 **ARC 3923B** ..... 941

### HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

- Filed, Public records and fair information practices,  
3.1 to 3.17 **ARC 3904B** ..... 941
- Filed, Historical library and state archives  
public access policies and services,  
amendments to ch 22 **ARC 3905B** ..... 941

### HUMAN SERVICES DEPARTMENT[441]

- Notice, State supplementary assistance program—  
adjustments to eligibility and payment levels,  
51.4(1), 51.7, 52.1 **ARC 3907B** ..... 919
- Amended Notice, Medicaid—coverage group  
limited to family planning services, 75.1(41),  
76.1, 76.7 **ARC 3925B** ..... 920
- Notice, Rehabilitative treatment services—  
eligibility and duration, amendments to ch 185  
**ARC 3924B** ..... 920
- Filed Emergency, State supplementary assistance  
program—adjustments to eligibility and payment  
levels, 51.4(1), 51.7, 52.1 **ARC 3908B** ..... 937
- Filed Emergency, Medicaid—eligibility and  
financial participation of institutionalized  
spouse, 75.5(3)"d," 75.16(2)"d"(3)  
**ARC 3909B** ..... 938
- Filed, HCBS ill and handicapped waiver  
eligibility, 83.2 **ARC 3910B** ..... 942

### INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Filed, Organization; contested cases; unfair  
trade practices, amendments to chs 1, 3, 15  
**ARC 3917B** ..... 942
- Filed, Life and health self-funded plans,  
35.20 **ARC 3916B** ..... 943
- Filed, Medicare supplement insurance minimum  
standards, amendments to ch 37 **ARC 3915B** .... 943

### PUBLIC HEARINGS

- Summarized list ..... 906

### PUBLIC SAFETY DEPARTMENT[661]

- Amended Notice, Fire fighter certification—  
minimum training standards, 54.100 to 54.104  
**ARC 3906B** ..... 921
- Filed, Fire safety standards—facilities in which  
agencies provide foster care to fewer than  
six children, 5.615 **ARC 3912B** ..... 943
- Filed, Fire fighter training and equipment funds,  
rescind ch 55; adopt ch 259 **ARC 3913B** ..... 944
- Filed, Volunteer emergency services provider  
death benefits, rescind ch 59;  
adopt ch 291 **ARC 3914B** ..... 949

Continued on page 903

## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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<b>REVENUE DEPARTMENT[701]</b>	<b>USURY</b>
Notice, Withholding tax, amendments to ch 46	Notice . . . . . 936
<b>ARC 3920B</b> . . . . . 922	

#### **CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

## Schedule for Rule Making 2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
***May 18***	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
***June 29***	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
***Aug. 24***	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
***Nov. 16***	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
***Dec. 14***	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

### PRINTING SCHEDULE FOR IAB

#### ISSUE NUMBER

#### SUBMISSION DEADLINE

#### ISSUE DATE

16

Friday, January 14, 2005

February 2, 2005

17

Friday, January 28, 2005

February 16, 2005

18

Friday, February 11, 2005

March 2, 2005

#### PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

\*\*\*Note change of filing deadline\*\*\*

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. West, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ADMINISTRATIVE SERVICES DEPARTMENT[11]</b>		
Customer councils, 10.5, 10.6(3), 10.7(2) IAB 1/5/05 <b>ARC 3926B</b>	Conference Room 4, Level A Hoover State Office Bldg. Des Moines, Iowa	January 25, 2005 11 a.m.
<b>ALCOHOLIC BEVERAGES DIVISION[185]</b>		
Interest in a retail establishment, 16.2 IAB 12/22/04 <b>ARC 3889B</b>	Board Room 1918 SE Hulsizer Rd. Ankeny, Iowa	January 11, 2005 2 p.m.
<b>BANKING DIVISION[187]</b>		
General, amendments to chs 1, 2, 4, 7 to 11 IAB 1/5/05 <b>ARC 3919B</b>	Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	January 25, 2005 10 a.m.
<b>DENTAL EXAMINERS BOARD[650]</b>		
Mandatory reporting, 30.4, 31.14 IAB 11/10/04 <b>ARC 3779B</b> (See also <b>ARC 3777B</b> )	Board Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	January 13, 2005 10 a.m.
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Teacher intern licensure, 14.129 IAB 1/5/05 <b>ARC 3922B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 25, 2005 2 p.m.
<b>ELDER AFFAIRS DEPARTMENT[321]</b>		
Adult day services programs, 24.1, 24.30 IAB 12/8/04 <b>ARC 3875B</b> (ICN Network)	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	January 6, 2005 1 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	January 6, 2005 1 p.m.
	Room 114, Dairy Education Center Northeast Iowa Community College 1527 Hwy 150 South Calmar, Iowa	January 6, 2005 1 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	January 6, 2005 1 p.m.
	Room 22 Iowa Lakes Community College 18th St. Estherville, Iowa	January 6, 2005 1 p.m.

**ELDER AFFAIRS DEPARTMENT[321] (Cont'd)**  
**(ICN Network)**

	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 6, 2005 1 p.m.
Assisted living programs, 25.1, 25.2, 25.22, 25.29 IAB 12/8/04 <b>ARC 3878B</b> <b>(ICN Network)</b>	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	January 6, 2005 1 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	January 6, 2005 1 p.m.
	Room 114, Dairy Education Center Northeast Iowa Community College 1527 Hwy 150 South Calmar, Iowa	January 6, 2005 1 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	January 6, 2005 1 p.m.
	Room 22 Iowa Lakes Community College 18th St. Estherville, Iowa	January 6, 2005 1 p.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 6, 2005 1 p.m.
Elder group homes, 29.1, 29.9 IAB 12/8/04 <b>ARC 3874B</b> <b>(ICN Network)</b>	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	January 6, 2005 1 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	January 6, 2005 1 p.m.
	Room 114, Dairy Education Center Northeast Iowa Community College 1527 Hwy 150 South Calmar, Iowa	January 6, 2005 1 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	January 6, 2005 1 p.m.
	Room 22 Iowa Lakes Community College 18th St. Estherville, Iowa	January 6, 2005 1 p.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 6, 2005 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Special requirements for visibility protection, 22.9 IAB 12/8/04 <b>ARC 3871B</b>	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 14, 2005 1 p.m.
Emission standards for contaminants, 23.2 IAB 12/8/04 <b>ARC 3872B</b>	Public Library 3520 86th St. Urbandale, Iowa	January 10, 2005 1 p.m.
Open feedlots, 65.1, 65.2, 65.9, ch 65 div II, 65.100 to 65.112, appendices A and E IAB 12/8/04 <b>ARC 3873B</b>	Events Center 800 W. 18th St. Spencer, Iowa	January 5, 2005 8:30 a.m.
	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	January 5, 2005 6:30 p.m.
	Rooms Iowa A/B, Third Floor Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	January 7, 2005 8:30 a.m.

**HUMAN SERVICES DEPARTMENT[441]**

Community care, 7.1, ch 186 IAB 12/22/04 <b>ARC 3893B</b>	Second Floor Conference Room Story County Human Services Bldg. 126 S. Kellogg St. Ames, Iowa	January 13, 2005 10 to 11 a.m.
	Lower Level CPI Conference Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	January 12, 2005 10 a.m.
	Sixth Floor Conference Room (605A & 605B) Scott County Administrative Center 428 Western Ave. Davenport, Iowa	January 14, 2005 10 a.m. to 12 noon
	Conference Room 104 City View Plaza 1200 University Ave. Des Moines, Iowa	January 13, 2005 10 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	January 14, 2005 9 a.m.
	Conference Room Johnson County DHS Office 911 N. Governor St. Iowa City, Iowa	January 13, 2005 1:30 to 2:30 p.m.
	Conference Room 3 Wapello County DHS Office 120 E. Main St. Ottumwa, Iowa	January 13, 2005 10 to 11 a.m.



**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

	Fourth Floor ICN Room Trosper-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	January 12, 2005 10 to 11 a.m.
	Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 13, 2005 10 to 11:30 a.m.
Medicaid coverage group limited to family planning services, 75.1(41), 76.1, 76.7 IAB 1/5/05 <b>ARC 3925B</b> (See also <b>ARC 3580B</b> , IAB 8/4/04)	First Floor Southeast Conference Rm. Side 2 Hoover State Office Bldg. Des Moines, Iowa	January 26, 2005 10 to 11 a.m.
Limits on eligibility and duration for rehabilitative treatment services, amendments to ch 185 IAB 1/5/05 <b>ARC 3924B</b>	Second Floor Conference Room Story County Human Services Bldg. 126 S. Kellogg St. Ames, Iowa	January 27, 2005 9 to 10 a.m.
	Lower Level CPI Conference Room Pottawattamie County DHS Office 417 E. Kanessville Blvd. Council Bluffs, Iowa	January 26, 2005 10 a.m.
	First Floor Board Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	January 28, 2005 1 to 3 p.m.
	Conference Room 104 City View Plaza 1200 University Ave. Des Moines, Iowa	January 27, 2005 10 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	January 27, 2005 9 a.m.
	Conference Room Johnson County DHS Office 911 N. Governor St. Iowa City, Iowa	January 27, 2005 1:30 to 2:30 p.m.
	Conference Room 3 Wapello County DHS Office 120 E. Main St. Ottumwa, Iowa	January 27, 2005 10 to 11 a.m.
	Fourth Floor ICN Room Trosper-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	January 26, 2005 9 to 10 a.m.
	Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 26, 2005 10 a.m. to 12 noon

**INSURANCE DIVISION[191]**

Electronic delivery of accident and health group insurance certificates, 40.25 IAB 12/22/04 <b>ARC 3891B</b>	330 Maple St. Des Moines, Iowa	January 12, 2005 10 a.m.
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**IOWA FINANCE AUTHORITY[265]**

Iowa aftercare services rent subsidy program, ch 22 IAB 12/22/04 <b>ARC 3890B</b>	Main Conference Room, Suite 250 100 E. Grand Ave. Des Moines, Iowa	January 11, 2005 10 to 11 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Interpreters for the hearing impaired, chs 360, 364 IAB 12/8/04 <b>ARC 3843B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 6, 2005 9 to 10 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Elevators, 16.720(2) IAB 12/22/04 <b>ARC 3886B</b> (See also <b>ARC 3885B</b> )	Fire Marshal Division Conference Rm. 401 SW Seventh St. Des Moines, Iowa	January 18, 2005 11 a.m.
Fire fighter certification, 54.100 to 54.104 IAB 1/5/05 <b>ARC 3906B</b> (See also <b>ARC 3482B</b> , IAB 7/7/04)	Fire Marshal Division Conference Rm. 401 SW Seventh St. Des Moines, Iowa	January 25, 2005 10 a.m.
	Classroom Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	February 3, 2005 10 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Motorcycle rider education, 635.3 to 635.5 IAB 12/8/04 <b>ARC 3846B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	January 5, 2005 10 a.m. (If requested)
First aid and medical treatment for railroad employees, 810.4 IAB 12/22/04 <b>ARC 3888B</b>	First Floor South Conference Room 800 Lincoln Way Ames, Iowa	January 13, 2005 10 a.m. (If requested)

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Agricultural Development Authority[25]  
   Soil Conservation Division[27]  
 ATTORNEY GENERAL[61]  
 AUDITOR OF STATE[81]  
 BEEF INDUSTRY COUNCIL, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
 CITIZENS’ AIDE[141]  
 CIVIL RIGHTS COMMISSION[161]  
 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Division[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
   Grow Iowa Values Board[264]  
   Iowa Finance Authority[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 GENERAL SERVICES DEPARTMENT[401]  
 HUMAN INVESTMENT COUNCIL[417]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]  
INFORMATION TECHNOLOGY DEPARTMENT[471]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Substance Abuse Commission[643]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
        Workforce Development Center Administration Division[877]

## ARC 3926B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement sections 8A.104 and 8A.121, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 10, “Customer Councils,” Iowa Administrative Code.

Amendments proposed after assessment of the first year of working with customer councils change the starting and ending dates of new members’ terms. New council members’ terms now start on July 1 and end on June 30. Current rules require that customer councils establish the rate setting procedure for utility services by September 1 in order to meet the time frames of the state budgeting process. These amendments will prevent the work of the customer councils from being disrupted by a change in membership in the final months of the annual rate setting deliberations.

Other proposed amendments change the Department’s customer complaint resolution process. Experience gained during the first year of working with utility services has indicated that, for effective resolution, complaints should be handled by staff most closely involved with the service provided. The Director will be responsible for final action on complaint resolution. Accordingly, the Department’s core administrative staff and customer council members have been removed from the process. These amendments provide general standards for the Department’s complaint resolution process. The specific procedures utilized by each Department Enterprise must meet these standards and be approved by the respective customer council.

Public comments concerning these proposed amendments will be accepted until 4:30 p.m. on January 25, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; or E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

There will be a public hearing on January 25, 2005, at 11 a.m. in Conference Room 4 at the Hoover State Office Building, Level A, Des Moines, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

These amendments are intended to implement Iowa Code Supplement section 8A.121.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 10.5(1) as follows:

**10.5(1)** Method of appointment of members.

a. Executive branch agency representation. Each customer council will include three members from large agencies, three members from medium-sized agencies and three members from small agencies.

(1) No change.

(2) Review. The directors or directors’ designees from each agency size group shall review representation on each customer council prior to ~~June 30~~ *August 1* of each year for the terms ending ~~June 30~~ *August 31* of that year *and select customer council members as in subparagraph (1) to fill vacancies caused by expired terms. The directors or directors’ designees shall use the process in subparagraph (1) to fill an executive branch customer council position that becomes vacant before the end of the term. This action shall occur by the end of the month following the month in which the vacancy occurred.* An agency may provide representatives to fill no more than one position on a customer council at one time. The department will periodically review the definition of large, medium-sized and small agencies based on the number of employees of the agencies in Iowa state government and make adjustments accordingly.

b. No change.

c. Additional members. A member of the public and a member of a union representing state employees involved in providing services overseen by the council shall be selected before the customer council’s second meeting after July 1, 2003, by the department directors or their designees. Subsequently, the department directors or their designees shall make these selections prior to ~~June 30~~ *August 1* of the year the term expires. *The directors or directors’ designees shall select the member of the public or the union representative to fill the respective customer council position that becomes vacant before the end of the term. This action shall occur by the end of the month following the month in which the vacancy occurred.*

d. No change.

ITEM 2. Amend subrule 10.5(3) as follows:

**10.5(3)** Term of membership. Each member will serve a three-year term; however, to ensure continuity of council functions, the first term for one representative of the large agencies, one representative of the medium-sized agencies, and one representative of the small agencies, and for the public member will be a two-year term; and one member from each agency size group and the union member will start with a four-year term. The agencies filling the initial two-year and four-year terms shall be selected by a vote of the members from agencies in each respective size group.

a. Initial membership terms shall begin on July 1, 2003. *Beginning in 2005, membership terms shall begin on September 1.*

b. *Each customer council member serving on June 30, 2005, shall have the member’s term extended by two months, ending on August 31 of the year in which the term expires.*

ITEM 3. Amend subrule 10.6(3) as follows:

**10.6(3)** Officers. *The elected officers of each customer council shall be the chairperson and vice chairperson.* Officers shall be elected at the first meeting after ~~July~~ *September* 1 each year by a simple majority of the voting members present and may be removed by a simple majority voting of the members present. ~~The elected officers of each customer council shall be the chairperson and vice chairperson.~~

ITEM 4. Rescind subrule 10.7(2) and adopt in lieu thereof the following **new** subrule:

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

**10.7(2) Complaint resolution.** The customer council shall approve the internal procedure for resolution of complaints concerning the utility services provided by DAS. The procedure shall include, at a minimum, the following provisions:

a. A definition of "complaint," which shall convey that this resolution process does not take the place of any other formal complaint, grievance or appeal process required by statute or rule.

b. A designation of one or more employees responsible for receiving and recording complaints.

c. Receipt and resolution of complaints by the area of the department providing the service.

d. Standards for prompt complaint resolution.

e. Provisions to aggregate, analyze and communicate issues and outcomes in a manner that contributes to overall organizational improvement.

f. Identification of the director's decision as the final step in the process.

## ARC 3919B

## BANKING DIVISION[187]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization," Chapter 2, "Application Procedures," Chapter 4, "State Banking Board," Chapter 7, "Public Records and Fair Information Practices," Chapter 8, "General Banking Powers," Chapter 9, "Investment and Lending Powers," Chapter 10, "Electronic Transfer of Funds," and Chapter 11, "Contested Cases," Iowa Administrative Code.

The amendments update existing rules to conform to recent legislative changes and an annual review for necessary corrections.

Interested persons may make written comments on the proposed amendments on or before January 25, 2005. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

Also, a public hearing will be held on Tuesday, January 25, 2005, at 10 a.m. in the Banking Division Conference Room at 200 East Grand Avenue. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Banking at least one day prior to the date of the public hearing.

These amendments are intended to implement Iowa Code sections 17A.3 and 524.213.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or

at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 187—1.2(17A,524) to read as follows:

**187—1.2(17A,524) Scope and application.** This chapter describes the office of the superintendent; ~~and the established place at which, the employees from whom and the methods whereby the public may obtain information, make submittals on requests or obtain decisions; and the forms available or the place at which forms and instructions as to the scope and contents of all papers, reports, or examinations may be obtained.~~

ITEM 2. Amend rule 187—1.3(17A,524) to read as follows:

**187—1.3(17A,524) Division of banking.** The division of banking is a subdivision of the department of commerce and consists of the superintendent and those employees who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general control, supervision and regulatory authority over all state-chartered banks, regulated loan companies, industrial loan companies, mortgage bankers, brokers, and registrants, delayed deposit service licensees, persons licensed to engage in the business of debt management and persons licensed to engage in the business of selling written instruments for the transmission or payment of money over all entities which the division is given authority to regulate pursuant to the Code of Iowa. The division consists of two separate bureaus. The bank bureau has primary responsibility relating to the supervision, regulation and chartering of state banks. The finance bureau has primary responsibilities relating to the supervision, regulation and licensing of regulated loan companies, ; industrial loan companies, ; mortgage bankers, brokers, and registrants, ; delayed deposit service licensees, ; persons engaged in the business of selling written instruments, ; and persons engaged in the business of debt management.

**1.3(1) Organization—superintendent.** The superintendent is the administrator of the division. The superintendent is appointed by the governor, by and with the approval of the senate, for a term of four years. The superintendent's office is located at 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The superintendent is assisted by the following officials who are responsible to the superintendent:

a. ~~Deputy superintendent~~ *Bank bureau chief.* The ~~deputy superintendent~~ *bank bureau chief* performs such duties as the superintendent prescribes, including general supervision of all matters pertaining to the office of the superintendent *supervision of all bank examining personnel, administration and supervision of regulatory examinations, and administration and supervision of all matters relating to the exercise of banking powers authorized by the laws of this state.* During the absence or disability of the superintendent, or as directed by the superintendent, ~~the~~ *a* deputy superintendent *who* possesses the powers and performs the duties of the superintendent *may be appointed by the superintendent.*

b. ~~Assistants.~~ The superintendent may appoint assistants to perform duties prescribed by the superintendent, including general supervision of all bank examining personnel, administration and supervision of regulatory examinations, and administration and supervision of all matters relating to the exercise of banking powers authorized by the laws of this state.

c. *b. Bank examination analysts.* Bank examination analysts perform such duties as the superintendent prescribes, including *advanced technical analysis and review of ex-*

## BANKING DIVISION[187](cont'd)

amination and financial reports of banks and bank holding companies; assessing, measuring, and monitoring the risk conditions in state banks and bank holding companies; assisting the superintendent and banking council in the analysis of applications submitted to the division for approval; and matters relating to the review and analysis of bank examination reports.

d. Finance bureau chief. The finance bureau chief performs duties prescribed by the superintendent, including general supervision over all matters relating to the licensing and supervision of regulated loan companies; ; industrial loan companies; ; mortgage bankers, brokers, and registrants; ; delayed deposit service licensees; ; persons engaged in the business of debt management; and persons engaged in the sale of written instruments.

d. Comptroller. The comptroller performs duties prescribed by the superintendent, including management of the administrative functions and fiscal affairs of the division of banking. The comptroller is also responsible for administration of personnel policies, work rules, payrolls, and employee benefits for all employees of the division.

e. Examiners. Regulatory examinations are performed by examining personnel situated in examination regions throughout the state. Each region is headed by a supervisor who is assisted by a staff of examiners. Each examiner performs duties prescribed by the superintendent in a manner consistent with the laws of this state and may be predominantly trained in the specialized fields of commercial bank and bank holding company regulation, trust asset administration, finance company and mortgage banking regulation, data processing, and other areas within the jurisdiction of the office of the superintendent.

### 1.3(2) Reserved.

This rule is intended to implement Iowa Code sections 17A.3 and 524.208.

### ITEM 3. Rescind rule **187—1.4(17A,524)**.

ITEM 4. Amend subrule 2.12(3), introductory paragraph, to read as follows:

**2.12(3) Public file.** The public file in each case shall consist of the application with supporting data and supplementary information with the exception of material deemed by the superintendent to be confidential. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such application, excluding any material deemed by the superintendent to be confidential. The superintendent or the superintendent's designee shall not deem information confidential for purposes of the two immediately preceding sentences unless the person submitting the information requests that such information be deemed confidential. All factual information contained in any field internal investigation report made by a bank examiner shall also be made a part of the public file, unless deemed confidential by the superintendent.

### ITEM 5. Rescind and reserve rule **187—2.13(524)**.

### ITEM 6. Amend **187—Chapter 4**, title, as follows:

#### STATE BANKING BOARD COUNCIL

### ITEM 7. Amend rule 187—4.1(524) to read as follows:

**187—4.1(524) Composition of board council.** The state banking board council is a statutory board council composed of the superintendent, who is an ex officio nonvoting member and chairperson, and six other members. All members of the board council are appointed by the governor.

### ITEM 8. Amend rule 187—4.2(524) to read as follows:

**187—4.2(524) Term of office.** Each member is appointed for a term of four years which is contemporaneous with the regular term of office of the superintendent. In case of a vacancy in the board, other than a vacancy in the office of the superintendent, a new member is appointed to fill such vacancy for the unexpired term. The terms of office for members of the state banking council, other than the superintendent, shall be four-year, staggered terms. Beginning May 1, 2005, members shall be appointed by the governor as follows: one member shall be appointed for a one-year term, one member shall be appointed for a two-year term, two members shall be appointed for three-years terms, and two members shall be appointed for four-year terms.

### ITEM 9. Amend rule 187—4.3(524) to read as follows:

**187—4.3(524) Function of the board council.** The state banking board acts in an advisory capacity concerning all matters that may come before it unless specific statutory authority is given for the board to act in a capacity other than advisory. The state banking council shall act in an advisory capacity concerning matters submitted to it by the superintendent pertaining to the administration of the Iowa banking Act.

### ITEM 10. Amend rule 187—4.4(524) to read as follows:

**187—4.4(524) Meetings and method of contacting members of the board council.** The state banking board generally meets in the office of the superintendent on the third Wednesday of each month. Such meetings will be adjourned for lack of a quorum unless at least four of the six members are present at the start of each meeting. The superintendent's office is located at 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Anyone wishing to contact members of the board at other times may obtain the address and telephone number for each member by calling or writing to the superintendent. The state banking council meets at least once each calendar quarter on such date and at such place as the council may decide. The council generally meets in the office of the superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827, which is also the address to correspond with any of the council members. The council shall meet at such other times as may be deemed necessary by the superintendent or a majority of the council members. Four members of the council shall constitute a quorum for each meeting.

### ITEM 11. Rescind rule **187—4.5(524)**.

ITEM 12. Adopt the following **new** implementation clause for **187—Chapter 4** as follows:

These rules are intended to implement Iowa Code section 524.205.

ITEM 13. Amend rule 187—7.15(17A,22), introductory paragraph, to read as follows:

**187—7.15(17A,22) Other groups of records routinely available for public inspection.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 7.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in subrules 7.15(1) to 7.15(4) may contain information about individuals. All records are stored on paper.

### ITEM 14. Amend subrule 7.15(2) to read as follows:

## BANKING DIVISION[187](cont'd)

**7.15(2)** Banking board *council* records. Agendas, minutes and materials presented to the Iowa division of banking board *council* are available from the office of the Iowa division of banking, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5, or which are otherwise confidential by law. Banking board *council* records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

ITEM 15. Amend subrule 7.15(8) to read as follows:

**7.15(8)** Officers and directors. Lists of officers and directors filed with the superintendent pursuant to the provisions of Iowa Code section 524.541. These reports are considered open records, *with the exception that lists of shareholders are confidential and not open to the public.*

ITEM 16. Amend rule 187—8.8(12B) to read as follows:

**187—8.8(12B) Approved rating services.** Rating services approved by the superintendent as provided by Iowa Code section 12B.10 for use by the treasurer of state and the treasurer of each political subdivision in determining qualifying commercial paper investments are Moody's Investors Services, New York, New York 10007, and Standard & Poor's, Chicago, Illinois 60680 60606.

This rule is intended to implement Iowa Code section 12B.10.

ITEM 17. Amend rule 187—8.9(524) to read as follows:

**187—8.9(524) General definition of bank.** It is the superintendent's intent that the term "bank" used in Iowa Code section 524.103(7 8) means a corporation organized under Iowa Code chapter 524 or a corporation organized under 12 U.S.C. §21. The general definition of "bank" as set forth in Iowa Code section 524.103(7 8) does not include a state savings association, federal savings association, state credit union, or federal credit union.

This rule is intended to implement Iowa Code section 524.103(7 8).

ITEM 18. Amend subrule **9.2(1)** by adopting the following **new** paragraph "j":

j. Establish procedures for conformance with secondary market investor requirements where applicable.

ITEM 19. Rescind subrules **9.2(2)** and **9.2(3)** and adopt the following **new** subrule 9.2(3) as follows:

**9.2(3)** Real estate loans made for sale into the secondary market shall be considered in transit for a period of 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

ITEM 20. Amend subrule 9.2(4) as follows:

**9.2(4 2)** Loan-to-value limits. The board of directors of the state bank shall establish its own internal loan-to-value (LTV) limits for real estate loans. These internal limits shall not exceed the following:

<b>LOAN CATEGORY</b>	<b>LTV (PERCENT)</b>
Raw land	65
Land development	75
Construction:	
Multifamily, commercial & other nonresidential	80
1- to 4-family residential	85
Farmland, ranchland or timberland	85
1- to 4-family not owner-occupied	85
Multifamily residential (5 or more units)	85

Commercial and other nonresidential \_\_\_\_\_ 85  
Owner-occupied 1- to 4-family and home equity \_\_\_\_\_\*

The loan-to-value limits established by the board shall not apply to loans for which a lien on or interest in real estate is taken as additional collateral through an abundance of caution.

\*A loan-to-value limit has not been established for permanent mortgage or home equity loans on owner-occupied, 1- to 4-family residential property. However, for any such loan with a loan-to-value ratio that exceeds 90 percent at origination, an institution should require appropriate credit enhancement in the form of either mortgage insurance or readily marketable collateral.

Compliance with the appropriate loan-to-value limits shall require that the state bank's lien be aggregated with more senior liens securing the same property. The state bank shall maintain written verification of the outstanding balance or the maximum credit available to the borrower of any more senior lien at the inception of the loan. The existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or part whereby the rents or profits are reserved to the owner shall not be deemed senior liens for purposes of compliance with loan-to-value limits.

ITEM 21. Rescind subrules **9.2(5)** to **9.2(9)**.

ITEM 22. Amend subrule 10.5(1) to read as follows:

**10.5(1)** Approval required. A satellite terminal shall not be established or operated in the state of Iowa unless written approval for that establishment and operation has been obtained from the administrator. *Exceptions to this requirement may exist based upon judicial rulings on applicability of Iowa Code subsections 527.5(3) and 527.5(7) to certain federally chartered financial institutions.*

ITEM 23. Amend rule 187—10.6(527) to read as follows:

**187—10.6(527) Advertising at satellite terminals** *Custom-er instruction in the use of a satellite terminal.*

**10.6(1)** Scope. A satellite terminal as defined by Iowa Code section 527.2 includes terminals located on the premises of a financial institution, as well as all terminals located off the premises of a financial institution. For purposes of advertising, however, only satellite terminals located off the premises of the establishing financial institution are governed by the restrictions contained in these rules.

**10.6(2)** Advertising at satellite terminal locations. The term "satellite terminal location," as used in Iowa Code subsection 527.5(5), means all physical space within 100 feet in any direction of the satellite terminal. Advertising identifying the establishing financial institution may be displayed at any location outside this area as defined; however, any physical structure which encompasses a satellite terminal location, except a branch facility of the establishing financial institution, is also prohibited from displaying advertising identifying the establishing financial institution.

**10.6(3)** Other forms of advertising. The establishing financial institution is permitted to advertise its establishment of off-premises satellite terminals in newspaper, radio, television, or other media, as long as such advertising does not appear or is not broadcast at the satellite terminal location or anywhere in or upon the physical structure encompassing the satellite terminal.



## BANKING DIVISION[187](cont'd)

**10.6(4)** ~~Satellite terminal use instructions.~~ Iowa Code subsection 527.5(4) prohibits employees of the establishing financial institution or affiliate from attending or operating a satellite terminal except on a temporary basis for the purpose of instructing customers in the proper use of the satellite terminal. For purposes of these rules, such temporary basis shall be defined to be no more than 30 calendar days from the date of initial operation of the satellite terminal. Satellite terminals located on the premises of the establishing financial institution are exempt from this restriction.

This rule is intended to implement Iowa Code ~~subsections~~ *subsection 527.5(4) and 527.5(5).*

ITEM 24. Amend subrule 11.12(3) to read as follows:

**11.12(3)** Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Division of Banking, Attn: ~~Deputy~~ Superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division of banking.

ITEM 25. Amend subrule 11.12(5) to read as follows:

**11.12(5)** Proof of mailing. Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to Division of Banking, Attn: ~~Deputy~~ Superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827 and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

## ARC 3921B

COLLEGE STUDENT AID  
COMMISSION[283]Notice of Termination  
and  
Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 21, “Approval of Postsecondary Schools,” Iowa Administrative Code.

Notice of Intended Action was originally published in the Iowa Administrative Bulletin on October 13, 2004, as **ARC 3739B**. The College Student Aid Commission received significant input from parties affected by the proposal and from the Administrative Rules Review Committee. Therefore, the Commission is terminating the rule making on that Notice of

Intended Action, **ARC 3739B**, and proposing this new Notice of Intended Action.

The proposed amendments specify additional rules and modifications concerning committee governance and approval of applicant schools.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 25, 2005, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3344.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapters 261 and 261B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

Amend **283—Chapter 21** as follows:

## CHAPTER 21

## APPROVAL OF POSTSECONDARY SCHOOLS

**283—21.1(261B) Advisory committee on postsecondary registration.** *The advisory committee on postsecondary registration examines out-of-state college and university applications for operation in Iowa and makes recommendations to the commission.*

**21.1(1)** *The six-member committee is appointed annually by the Iowa college student aid commission and includes one representative from each of the following:*

- a. *The state board of regents.*
- b. *The department of education.*
- c. *The office of the secretary of state.*
- d. *The office of the attorney general.*
- e. *A community college located in this state.*
- f. *An accredited private postsecondary institution as defined in Iowa Code section 261.9, subsection 1, incorporated or otherwise organized under the laws of this state.*

**21.1(2)** *The committee shall meet as needed. Meetings may be called by commission staff or upon request of a majority of committee members. A nonvoting staff member shall preside as chairperson at the meetings.*

**21.1(3)** *The commission shall give advance public notice of the time and place of each meeting by posting the notice to the commission’s Web site. The notice will include the specific date, time, and place of the meeting, and the proposed agenda.*

**21.1(4)** *A quorum shall consist of two-thirds of the voting members of the committee. When a quorum is present, a position is carried by an affirmative vote of the majority of committee members eligible to vote.*

**21.1(5)** *The committee may consider comments of the Iowa Coordinating Council for Post High School Education that are received by the commission within 90 days of the filing of the application.*

**21.1(6)** *A specific time is set aside at each meeting for the public to address the committee. As a general guideline, a limit of five minutes will be allocated for each of these presentations. If a large group seeks to address a specific issue, the chairperson may limit the number of speakers. Members of the public who wish to address the committee during this portion of the meeting are required to submit a request to the executive director prior to the meeting. The person’s name and the subject of the person’s remarks must be noted. To accommodate maximum public participation, members of the*

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

public are encouraged to submit the request at least 72 hours in advance of the meeting. Members of the public who fail to submit a request may be recognized at the discretion of the presiding chairperson.

**21.1(7)** A report of all committee meetings will be provided to the commission at its next regularly scheduled meeting.

**283—21.1(261B) 283—21.2(261B) Approval criteria.** The college student aid commission shall approve applicant schools that:

1. Are accredited by an agency recognized by the United States Department of Education *Accrediting Agency Evaluation Unit* or its successor agency.

2. Are approved for operation by the appropriate state agencies in all other states in which the schools operate or maintain a presence.

3. Are not subject to a limitation, suspension or termination order issued by the United States Department of Education or its successor agency.

4. Are free of sanctions from the schools' accrediting agencies and appropriate state agencies in all other states in which the schools operate or maintain a presence.

5. Enroll students who attend classes in Iowa and employ at least one full-time Iowa faculty member or program coordinator ~~with devoted to Iowa students who has~~ graduate degrees, special training, experience, creative production or other accomplishments or distinctions that qualify them for their specific assignments.

6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.

7. Comply with the requirements of Iowa Code section 261.9(1)"e" to "h."

8. File annual reports that the commission requires from all Iowa colleges and universities.

~~9. Have submitted a description of a proposed program(s) to members of the Iowa coordinating council for post-high school education and have responded to any inquiries or concerns.~~

~~10. Meet all certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.~~

9. *Demonstrate financial viability by providing a copy of the institution's most recent audit prepared by a certified public accounting firm no more than 12 months prior to the application and that provides an unqualified opinion.*

10. *Provide students with access to learning resources, including appropriate library and other support services requisite for the schools' degree programs.*

11. *Provide evidence that faculty within an appropriate discipline are involved in developing and evaluating curriculum for the program(s) being registered in Iowa.*

12. *Demonstrate that the schools have adequate physical facilities that are appropriate for the program(s) being offered and are located in Iowa.*

13. *Include a statement, signed by the chief executive officer of the applicant school, demonstrating the institution's commitment to the delivery of programs located in Iowa, and agreeing to provide alternatives for students to complete their programs at the same or other institutions if the applicant school closes the program before students have completed their courses of study.*

~~This rule is~~ These rules are intended to implement Iowa Code chapter chapters 261 and 261B.

ARC 3922B

EDUCATIONAL EXAMINERS  
BOARD[282]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendments to the teacher intern license will allow for more innovation and flexibility, while still ensuring the integrity of program standards.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, January 25, 2005, at 2 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, January 28, 2005. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [barbara.hendrickson@iowa.gov](mailto:barbara.hendrickson@iowa.gov), or by fax to (515)281-7669.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend subrule 14.129(1) as follows:

**14.129(1)** Authorization. The teacher intern is authorized to teach in a high school, grades 9 7 to 12. *The following rule does not apply to the endorsements on a teacher intern license: 282—14.140(272), requirements for other teaching endorsements.*

ITEM 2. Amend subrule **14.129(3)**, paragraph "d," as follows:

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

d. Successfully complete the ~~introductory~~ teacher intern program *requirements listed in subrule 14.129(5) and approved by the state board of education.*

ITEM 3. Adopt new paragraph **14.129(3)“e”** as follows:

e. Successfully pass a basic skills test at the level approved by the teacher education institution.

ITEM 4. Amend subrule **14.129(4)**, paragraphs “a” and “b,” as follows:

a. Provide an offer of employment to an individual who has been evaluated by a college or university for eligibility or acceptance in the teacher intern program. ~~Employment shall begin with the fall academic year.~~

b. Participate in a ~~state-approved~~ mentoring and induction program.

ITEM 5. Amend subrule **14.129(4)**, paragraph “e,” as follows:

e. Not ~~unnecessarily~~ overload the teacher intern with extracurricular duties not directly related to the teacher intern’s teaching assignment.

ITEM 6. Amend subrule 14.129(5) as follows:

**14.129(5)** Program requirements. The teacher intern shall:

a. Complete the ~~teacher intern introductory program of a minimum of 12 semester hours to include the following requirements prior to the internship year:~~

(1) to (7) No change.

(8) ~~Field experience experiences that provides provide~~ opportunities for interaction with students in an environment that supports learning in context. *These experiences shall total at least 50 contact hours in the field prior to the beginning of the academic year of the candidate’s initial employment as a teacher intern.*

b. Complete four semester hours of a teacher intern seminar during the teacher internship year to include support and extension of coursework from the teacher intern ~~introductory~~ program.

c. Complete a ~~concluding teacher intern program of a minimum of 12 semester hours the coursework and competencies~~ in the following areas:

(1) to (6) No change.

ITEM 7. Amend subrule **14.129(6)**, paragraph “a,” as follows:

a. Successful completion of the ~~entire coursework and competencies~~ in the teacher intern program approved by the state board of education.

ITEM 8. Amend subrule **14.129(6)**, paragraph “c,” as follows:

c. Verification from a licensed evaluator that the teacher intern is participating in a ~~state-approved~~ mentoring and induction program *and is being assessed on the Iowa teaching standards.*

ITEM 9. Adopt the following new subrule:

**14.129(7)** Requirements to obtain the initial license if the teacher intern does not complete the internship year. An initial license shall be issued upon application provided that the teacher intern has met all of the following requirements:

a. Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education.

b. Verification by a college or university that the teacher intern successfully completed the college’s or university’s state-approved student teaching requirements.

c. Recommendation by a college or university offering an approved teacher intern program that the individual is eligible for an initial license.

d. At the board’s request, the teacher intern shall provide to the board information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

## ARC 3907B

HUMAN SERVICES  
DEPARTMENT[441]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2004 Iowa Acts, chapter 1175, section 120, the Department of Human Services proposes to amend Chapter 51, “Eligibility,” and Chapter 52, “Payment,” Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program necessary to meet the federal pass-along requirements specified in Title XVI of the Social Security Act. Iowa uses the payment levels method of compliance, which requires the state to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 2.7 percent for calendar year 2005.

Changes necessary to meet federal pass-along requirements are as follows:

- Increasing the income limit for dependent relatives from \$285 per month to \$293.
- Increasing the dependent relative payment standards by \$23 per month for an eligible individual and \$31 per month for an eligible couple.
- Increasing the maximum family-life home payment \$7 per month, from \$645 to \$652.
- Increasing the family-life home personal needs allowance \$8 per month, from \$81 to \$89.
- Increasing the family-life home income limit \$15 per month, from \$726 to \$741.
- Increasing the maximum residential care per diem rate from \$25 to \$25.07.

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities by the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments also increase the residential care facility personal needs allowance \$8 per month, from \$81 to \$89.

These amendments do not provide for waivers in specified situations because they benefit the people affected by increasing payment levels and personal allowances.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3908B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before January 26, 2005. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 249 and 2004 Iowa Acts, chapter 1175, section 120.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 3925B****HUMAN SERVICES  
DEPARTMENT[441]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services gives notice that a public hearing will be held on Wednesday, January 26, 2005, from 10 to 11 a.m. in the First Floor Southeast Conference Room Side 2, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa. The purpose of the hearing is to receive oral or written comments on amendments to subrules 75.1(41), 76.1(1), and 76.1(2) and rule 441—76.7(249A) regarding the establishment of a new Medicaid coverage group to provide family planning services only.

Notice of Intended Action concerning these amendments was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3580B**. The Department is still awaiting approval of these amendments by the U.S. Centers for Medicare and Medicaid Services.

**ARC 3924B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

These amendments set limits on eligibility and duration for rehabilitative treatment services as follows:

- The amendments provide that children placed in emergency shelter care or foster group care are not eligible for family-centered supervision services and that children placed in psychiatric medical institutions for children are not eligible for any rehabilitative treatment services. The purpose of these restrictions is to avoid duplication of services, which is contrary to federal Medicaid regulations.

- The amendments limit the provision of family-centered service to children placed in emergency shelter care to 8 units of therapy and counseling and 12 units of skill development, all provided within 30 days for the purpose of family reunification. These limits will make the service focus consistent with the intended short-term nature of shelter placement.

These amendments do not provide for waivers in specified situations. Individuals who believe themselves disadvantaged by these rules may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before January 28, 2005. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

The Department will hold public hearings on these amendments at the places and times listed below.

Story County Human Services Building Second Floor Conference Room 126 South Kellogg Street Ames, Iowa	January 27, 2005 9 to 10 a.m.
Pottawattamie County DHS Office Lower Level CPI Conference Room 417 E. Kanesville Boulevard Council Bluffs, Iowa	January 26, 2005 10 a.m.
Scott County Administrative Center First Floor Board Room 428 Western Avenue Davenport, Iowa	January 28, 2005 1 to 3 p.m.
City View Plaza Conference Room 104 1200 University Avenue Des Moines, Iowa	January 27, 2005 10 a.m.
Nesler Centre Third Floor Conference Room 799 Main Street Dubuque, Iowa	January 27, 2005 9 a.m.
Johnson County DHS Office Conference Room 911 N. Governor Street Iowa City, Iowa	January 27, 2005 1:30 to 2:30 p.m.
Wapello County DHS Office Conference Room #3 120 E. Main Street Ottumwa, Iowa	January 27, 2005 10 to 11 a.m.
Trosper-Hoyt Building Fourth Floor ICN Room 822 Douglas Street Sioux City, Iowa	January 26, 2005 9 to 10 a.m.
Pinecrest Office Building Room 420 1407 Independence Avenue Waterloo, Iowa	January 26, 2005 10 a.m. to 12 noon

People appearing at these meetings may make oral presentations or submit written comments. Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Office of

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 234.6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 441—185.2(234) as follows:

Amend subrule **185.2(1)** by adopting **new** paragraph “f” as follows:

f. The services do not duplicate services for which reimbursement is already being provided.

(1) Children placed in a psychiatric medical institution for children are not eligible for rehabilitative treatment and supportive services.

(2) Children placed in emergency shelter care or foster group care are not eligible for family-centered supervision services.

Adopt **new** subrule 185.2(5) as follows:

**185.2(5)** Service limits. Children placed in emergency shelter care are eligible for rehabilitative treatment and supportive services within the following limits:

a. Up to 8 units of family-centered therapy and counseling services may be authorized for the purposes of family reunification.

b. Up to 12 units of family-centered skills development services may be authorized for the purposes of family reunification.

c. The maximum length of time that family-centered therapy and counseling and skills development services may be provided to a child placed in shelter care is 30 days.

ITEM 2. Strike the phrase “regional administrator” and insert in lieu thereof “service area manager” wherever the phrase appears in **185.10(8)“b”(4)“2,”** **185.83(4)“b”(3),** **185.112(1)“c,”** **185.112(1)“d,”** **185.112(1)“j,”** and **185.112(2)“b.”**

ITEM 3. Amend rule **441—185.101(234)** by rescinding the definition of “host region” and adopting a **new** definition of “host area” as follows:

“Host area” means the department service area that is responsible for administering the provider's contract with the department to provide rehabilitative treatment and supportive services.

ITEM 4. Strike the phrase “host region” and insert in lieu thereof “host area” wherever the phrase appears in **185.112(1)“c,”** **185.112(1)“d,”** **185.112(1)“j,”** and **185.112(2)“b.”**

ITEM 5. Strike the word “regions” and insert in lieu thereof “service areas” wherever the word appears in subparagraph **185.112(1)“c”(1).**

ITEM 6. Strike the word “region” and insert in lieu thereof “service area” wherever the word appears in subparagraph **185.112(1)“c”(2).**

**ARC 3906B****PUBLIC SAFETY  
DEPARTMENT[661]****Amended Notice of Intended Action**

The Department of Public Safety hereby amends the Notice of Intended Action to amend Chapter 54, “Fire Fighter Certification,” Iowa Administrative Code, which was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3482B**, and amended by a previous Amended Notice of Intended Action published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3710B**.

The Notice of Intended Action, **ARC 3482B**, proposed the adoption of rules which would establish minimum training standards for fire fighters. The previous Amended Notice of Intended Action, **ARC 3710B**, extended the period for public comment on the proposed rules.

The Administrative Rules Review Committee, at its meeting on August 10, 2004, instructed the Department of Public Safety to complete a regulatory analysis of the proposed rules, pursuant to Iowa Code section 17A.4A. This section provides that, once a regulatory analysis has been required, the period for public comment is to be extended at least 20 days beyond the required publication of a “concise summary” of the regulatory analysis in the Iowa Administrative Bulletin. Since the publication date of the regulatory analysis remains unknown at this time, the closing date for the extended period for public comment on the proposed rules will be specified in the concise summary of the regulatory analysis published at a later date in the Iowa Administrative Bulletin. Additional public hearings will be held on January 25, 2005, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Des Moines, Iowa 50309; and on February 3, 2005, at 10 a.m. in the classroom at the Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50011.

Persons may present their views orally or in writing at a public hearing. Persons who wish to make oral presentations at a public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), one day prior to the public hearing. Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated or submitted at a public hearing. Persons who wish to convey their views orally other than at a public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office.

Although any interested person may comment on any aspect of the proposed rules contained in the Notice of Intended Action, the Department specifically solicits the submission of any comments or information which may be related to the required regulatory analysis. Information about the following items may be particularly useful for the required analysis:

- The number of fire fighters, both paid and volunteer, in service in Iowa.
- The number of fire fighters, both paid and volunteer, who may respond to structural fires, as defined in the proposed rules.
- The level of training achieved by fire fighters who may respond to structural fires.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

- Data on numbers of hours and subjects covered in in-service training offered to current fire fighters.
- Current minimum training requirements enforced by fire departments in Iowa, both paid and volunteer.

Comments on the rules proposed in **ARC 3482B** may be transmitted to the Department via electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), regular mail to Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319, telephone at (515)281-5524, or fax at (515)242-6136. Further information, including the text of the Notice of Intended Action, may be obtained from the Department's Web site at <http://www.dps.state.ia.us/admrule>.

**ARC 3920B****REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 46, “Withholding,” Iowa Administrative Code.

These amendments clarify existing rules, remove obsolete rule provisions and add new rules relating to Iowa withholding tax.

Items 1 through 4 amend rules 701—46.1(422) through 701—46.4(422) to remove obsolete provisions and clarify existing provisions in these rules. In addition, Item 3 provides for changes in reporting withholding tax due to electronic filing of withholding tax returns and payments that will commence for withholding that occurs on or after January 1, 2005.

Items 5 and 6 amend rules 701—46.6(422) and 701—46.7(422) to clarify existing provisions and make changes relating to departmental reorganization.

Item 7 adopts new rule 701—46.8(260E) to provide for the new jobs credit from withholding, which is provided in Iowa Code section 260E.5.

Item 8 adopts new rule 701—46.9(15) to provide for the supplemental new jobs credit from withholding and the alternative tax credit for housing assistance programs pursuant to Iowa Code sections 15.331 and 15E.196(1).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than February 7, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building,

P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 25, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by January 28, 2005.

These amendments are intended to implement Iowa Code chapters 15, 15E, 260E and 422.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 701—46.1(422) as follows:

**701—46.1(422) Who must withhold.****46.1(1) Requirement of withholding.**

a. General rule. Every employer maintaining an office or transacting business within this state and required under provisions of Sections 3401 to 3404 of the Internal Revenue Code to withhold and pay federal income tax on compensation paid for services performed in this state to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in Section 3401(b) of the Internal Revenue Code) an amount computed in accordance with *subrules* 46.2(1) and 46.2(2). Iowa income tax is not required to be withheld on any compensation paid in this state of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., FICA taxes), except as provided in *rule* 46.4(422).

b. Examples. Paragraph “a” above may be illustrated by the following examples:

(1) Temporary help. A is a typist in the offices of B corporation, where she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Iowa. C renders a weekly bill to B corporation for A's services, and C then pays A. B corporation is not A's “employer” within Section 3401(d) of the Internal Revenue Code, and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A's compensation. Since B corporation is not required to withhold a tax for federal purposes on A's compensation, B is not required to do so for Iowa purposes. The C, the temporary help agency, however, is required to withhold from A's compensation for federal purposes and must ~~similarly~~ also do so for Iowa purposes.

(2) Domestic help. A is employed as a cook by Mr. and Mrs. B. The B's are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold *income tax* from such compensation ~~for income tax~~ under the Internal Revenue Code, because under Section 3401(a)(3), A's compensation does not constitute

## REVENUE DEPARTMENT[701](cont'd)

"wages". Since the B's are not required to withhold income tax for federal purposes, they are not required to do so for Iowa purposes.

(3) ~~Agricultural labor for which wages are paid prior to July 1, 1990. A is a full-time worker on B's farm. A's duties include soil cultivation, raising and harvesting corn and maintenance of farm tools and equipment. B is not required to withhold from A's compensation because the wages were paid prior to July 1, 1990, when wages for agricultural labor became subject to state income tax withholding. Therefore, B was not required to withhold for Iowa tax purposes. See subparagraph (5) below which describes the withholding of state income tax for wages paid on or after July 1, 1990, for agricultural labor.~~

(4) (3) Executives. A is a corporate executive. On January 1, 1968 1998, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of five years. Under the contract, A is entitled to a stated annual salary and to additional compensation of \$10,000 for each year. The additional compensation is to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of \$5,000 on A's retirement beginning January 1, 1973 2003. In the event of A's death prior to exhaustion of the account, the balance is to be paid to A's personal representative. A is not required to render any service to B after December 31, 1972 2002. During 1973 2003, A is paid \$5,000 while a resident of Iowa. The \$5,000 is not excluded from "wages" under Section 3401(a) of the Internal Revenue Code; therefore, B is required to withhold federal income tax, and, since it is compensation paid in this state, B must withhold Iowa income tax on A's deferred compensation.

(5) (4) ~~Agricultural labor for which wages are paid on or after July 1, 1990. Wages paid for agricultural labor on or after July 1, 1990, are subject to withholding for state income tax purposes to the same extent that the wages are subject to withholding for federal income tax purposes. In general, wages paid after December 31, 1989, for agricultural labor are subject to federal income tax withholding, if the employer pays more than \$2,500 in wages during the year to all employees or if one employee receives \$150 or more in cash remuneration in the year from the employer. The federal criteria for income tax withholding on wages paid for agricultural labor are adopted for state income tax purposes, but do not apply to wages paid for agricultural labor which are paid after December 31, 1989, but prior to July 1, 1990.~~

In situations where withholding agents have voluntarily withheld state income tax from wages paid in the period from January 1, 1990, through June 30, 1990, for agricultural labor, the tax withheld and remitted to the department is not subject to penalty and interest for failure to pay 90 percent of the tax by the due date. This is because the tax was not required to be withheld, since there was no obligation to withhold state income tax on wages paid for agricultural labor in instances when the wages were paid before July 1, 1990.

c. Exemption from withholding. An employer may be relieved of the responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the current tax year.

An employee who anticipates no Iowa income tax liability for the current tax year shall file *with the employer* a withholding allowance certificate with their employer claiming exemption from withholding. An employee who meets this *criteria* *criterion* may claim an exemption from withholding at any time; however, this exemption from withholding must be renewed by February 15 of each tax year that the *criteria*

*criterion* is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. See *subrule* 46.3(2).

d. Withholding from lottery winnings. Every person, including employees and agents of the Iowa lottery agency *authority*, making any payment of "winnings subject to withholding" (defined in subparagraph (1) below) shall deduct and withhold a tax in an amount equal to 5 percent of the winnings. The tax shall be deducted and withheld upon payment of the winnings to a payee by the person or payer making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation §31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of winners *winnings* subject to withholding shall *must* file a return on Form W-2G with the Internal Revenue Service, the department of revenue and finance, and with the payee of the lottery winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form shall include the information described in Treasury Regulation §31.3402(q)-1, paragraph "f." Other informational returns shall be filed with the department of revenue and finance whenever the Iowa lottery agency has data which shows that the aggregate winnings paid to an individual in the calendar year are \$1,000 or more.

(1) Lottery winnings subject to withholding. Lottery winnings "Winnings subject to withholding" means any payment where the proceeds from a wager exceed \$600. The rules for determining the amount of proceeds from a wager under Treasury Regulation Section 31.3402(q)-1, paragraph "c," shall apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required. This rule shall apply to winnings from tickets purchased from the Multistate Lottery Powerball and Hot Lotto games or any other similar games to the extent the tickets were purchased within the state of Iowa.

(2) Reserved.

e. Withholding from prizes from games of skill, games of chance, or raffles. Every person making any payment of a "prize subject to withholding" (defined in subparagraph (1) below) must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.2402(q)-1, paragraph "e," with the information required by that paragraph. Payers of prizes subject to withholding must file a return on Form W-2G with the Internal Revenue Service, the department of revenue and finance, and with the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f." Other informational returns must be filed with the department of revenue and finance whenever the payer has data which shows that the aggregate winnings paid to an individual in the calendar year are \$1,000 or more.

(1) Prizes subject to withholding. "Prizes subject to withholding" means any payment of a prize where the amount won exceeds \$600.

(2) Reserved.

## REVENUE DEPARTMENT[701](cont'd)

f. Withholding from winnings from pari-mutuel wagers. Every person making any payment of "winnings subject to withholding" (defined in subparagraph (1) below) must deduct and withhold a tax in an amount equal to 5 percent of the winnings from pari-mutuel wagers. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of winnings subject to withholding must file a return on Form W-2G with the Internal Revenue Service, the department of revenue and finance, and with the payee of the winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f."

(1) ~~Pari-mutuel winnings subject to withholding. For winnings paid from January 1, 1987, through June 30, 1992, winnings subject to withholding means any payment of winnings from a pari-mutuel wager where the proceeds (winnings less amount wagered) are subject to federal income tax withholding under Treasury Regulation Section 31.3402(q)-1(b). Under Treasury Regulation Section 31.3402(q)-1(b), federal income tax is to be withheld only if the proceeds from the wager (a) exceed \$1,000 and (b) are at least 300 times as large as the amount of the wager.~~

For winnings paid on or after July 1, 1992, winnings "Winnings subject to withholding" are winnings in excess of \$1,000.

(2) Reserved.

g. Withholding from winnings from *slot machines on riverboat gambling vessels* and from winnings from slot machines at racetracks. Effective for winnings paid on or after July 1, 1992, from slot machines on riverboat gambling vessels, withholding of state income tax is required if the winnings from *slot machines on riverboat gambling vessels or from slot machines at racetracks* exceed \$1,200. Effective for winnings paid on or after July 1, 1995, from slot machines at racetracks, withholding of state income tax is required if the winnings exceed \$1,200.

**46.1(2)** Withholding on pensions, annuities and other nonwage payments to Iowa residents. Effective for nonwage payments made to individuals on or after January 1, 1992, state income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule is to ~~cover~~ covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. *This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax.* However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. See paragraph "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or af-

ter January 1, 1999, and paragraph "g" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 1996. Generally, no state income tax is required to be withheld from nonwage payments to residents in circumstances where the payment amounts are less than \$200,250 or the taxable portions of the payments are less than \$200,250 in situations where the payers know the taxable amounts. In instances where a payment amount or taxable amount is \$200,250 or more but the payment amount or the taxable amount for the year is less than \$2,400,300, no state income tax is required to be withheld. In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

~~The Iowa income taxes withheld from pensions and annuities may be considered separately from Iowa income taxes withheld from wages of employees for purposes of determining when withholding tax reports are to be filed with the department with the taxes withheld from the pensions and annuities. However, the payers of the pensions and annuities can also elect to aggregate the Iowa income taxes withheld from pensions and annuities with the Iowa income tax withheld from wages and remit the total amount withheld with one deposit form. One of the two options for remitting withholding tax to the department should be used for the entire calendar year.~~

In the case of a lump-sum distribution from a qualified retirement plan received by an Iowa resident in the tax year, state income tax is required to be withheld if the taxable amount of the distribution is \$2,400 or more and federal income tax is being withheld from the distribution.

Payers of pension and annuity benefits and other nonwage payments may withhold state ~~have the option of either withholding~~ Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue and finance ~~or withholding~~ Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers using the withholding formulas and withholding tables in situations when federal income tax is being withheld from the nonwage payments.

a. Withholding from pension and annuity payments to residents. Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent the payments are made on or after January 1, 1992, and to the extent that the recipients of the payments have not filed election forms with the payers of the benefits ~~election forms~~ which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph "g h" for threshold amounts for withholding from payments of pensions, annuities, and other retirement



## REVENUE DEPARTMENT[701](cont'd)

incomes which are made on or after January 1, 1996 2001. At least 30 days prior to the first payment of pension or annuity benefits to an Iowa resident made on or after January 1, 1992, the payer of the benefits may send a letter to the recipient to notify the Iowa resident that Iowa income tax will be withheld if federal income tax is being withheld from the pension or annuity. The letter should mention that Iowa income tax will be withheld at a rate of 5 percent and will be withheld only from the taxable portion of the payment or from the total payment if the payer does not know the taxable amount.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents on or after January 1, 1992, if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law. In addition, no Iowa income tax is required from a pension or annuity payment made to an Iowa resident to the extent that the payment amounts are less than \$200 250 or the taxable amounts of the payments are less than \$200, 250 in instances where the payers know the taxable amounts of the payments.

Payers of pension or annuity benefits to Iowa residents may provide an option for the withholding of state income tax from the benefits to those recipients of the pension or annuity benefits who have filed election forms with the payers that specify no federal income tax is to be withheld from the pension or annuity payments. The following is a sample notice that can be used to give Iowa residents a separate option for withholding of state income tax from pension or annuity benefits, although no federal income tax is being withheld from the benefits. The notice for withholding of state income tax should include the information shown below:

**NOTICE OF WITHHOLDING OF STATE  
INCOME TAX FROM (PENSIONS OR ANNUITIES)**

Beginning on (date) the (pension or annuity) payments you receive from the (insert name of plan or name of company) will be subject to state income tax. You have previously made an election so that no federal income tax is to be withheld from your (pension or annuity). No Iowa income tax will be withheld from your (pension or annuity) unless you complete, date, and sign the enclosed election form and return it to (name and address). If no state income tax is withheld from your (pension or annuity), you will still be subject to Iowa income tax on this income. You may be subject to penalties under rules for estimated tax if your payments of estimated tax and state withholding tax, if any, are not adequate.

If you make the election for withholding of state income tax, the amount to be withheld will be 5 percent of the taxable portion of the payment or 5 percent of the payment amount in situations where the payer does not know how much of the payment amount is taxable. However, no state income tax is to be withheld if the taxable portion of the (pension or annuity) is less than \$2,400 on an annual basis or less than \$200 on a monthly basis. Your election will remain in effect until you revoke it by stating, in writing to your payer, your intention to cease the withholding of state income tax from your (pension or annuity). Any election or revocation will be effective no later than January 1, May 1, July 1, or October 1 after it is received, so long as it is received at least 30 days before that date.

**ELECTION FOR WITHHOLDING STATE INCOME  
TAX FROM YOUR (PENSION OR ANNUITY)**

Instructions: Check the box below to have state income tax withheld from your (pension or annuity). Sign and date the election form and return the form to (insert name and address).

☐ Please withhold state income tax from my (pension or annuity).

Signed: \_\_\_\_\_

Name

Date

Return the completed election form to: (insert name and address).

b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies. Effective for payments made on or after January 1, 1992, payments *Payments* to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits because the recipient of the benefits has not completed the election form to specify no federal income tax is to be withheld. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph "g h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 1996 2001. In addition, no state income tax is to be withheld in circumstances where payment amounts are less than \$200 250 or the taxable portions of the payments are less than \$200 250 in cases when the payer knows the taxable amount of the payment. There is also no state income tax withholding in situations where the payment amount or the taxable amount is \$200 250 or more but the payment amount or the taxable amount for the year is less than \$2,400 3,000.

At least 30 days prior to the first payment of one or more of the above described income payments made to an Iowa resident on or after January 1, 1992, the payer of the income may send a letter to the recipient of the payment so the resident will be aware that Iowa income tax will be withheld at a 5 percent rate if federal income tax is being withheld. Although payers of the benefits listed at the beginning of this paragraph are required to withhold Iowa income tax from the benefit payments to Iowa residents starting on January 1, 1992, only if federal income tax is being withheld from the payments, the payers may give the Iowa residents a separate option for withholding of Iowa income tax in situations where the taxpayers have filed election forms with the Internal Revenue Service to provide that no federal income tax is to be withheld from the benefit payments. A sample notice for making the election for withholding state income tax is found in paragraph "a" of this subrule. That sample notice can be modified for purposes of notifying recipients that an election for withholding form may be completed for withholding of state income tax from payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from payments from life insurance companies for life insurance contracts, annuities and endowments.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable

## REVENUE DEPARTMENT[701](cont'd)

portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits. Income payments made on or after January 1, 1992, for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax under the conditions described in this paragraph. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld because the payments are treated as wages. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—40.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. However, no withholding of state income tax should be made if the benefit payment is less than \$200.250. Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld.

d. *Voluntary state income tax withholding from unemployment benefit payments. Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.*

d e. Withholding on lump-sum distributions from qualified retirement plans. ~~Effective for~~ For lump-sum distribution payments from qualified retirement plans made on or after January 1, 1992, to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph "g h" for thresholds for withholding on lump-sum distributions issued on or after January 1, 1996 2001. In addition, Iowa income tax is not required to be withheld on the distribution to the extent that the amount of the distribution or the taxable amount, if known by the payer, is less than \$2,400 3,000. Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount, if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

e f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas. ~~Effective for nonwage payments made on or after January 1, 1992, to Iowa residents, state~~ State income tax may be withheld from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue and finance. See paragraph "g h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 1996 2001. When state income tax withholding is being done from withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W4 which have has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

This paragraph "e" applies to all nonwage payments made to Iowa residents, including payments of pensions and annuities.

f g. Withholding on distributions from qualified retirement plans that are not directly rolled over. ~~Effective for distributions from qualified retirement plans made on or after September 1, 1993, state~~ State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. However, if the gross amount or taxable amount of a distribution is less than \$2,400 3,000, state income tax withholding is not required. See paragraph "g h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, 1996 1999.

g. Withholding from distributions made on or after January 1, 1996, but prior to January 1, 1999, from pensions, an-

## REVENUE DEPARTMENT[701](cont'd)

nuities, individual retirement accounts, deferred compensation plans and other retirement plans. Effective for distributions from pension plans, annuities, individual retirement accounts, deferred compensation and other retirement plans, state income tax is generally required to be withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan to the extent the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a distribution from a pension or other retirement plan if the amount of the distribution is \$250 or less or if the taxable amount is \$250 or less, if the state taxable amount is known by the payer of the distribution. There is no requirement for withholding state income tax from a distribution from a pension or other retirement plan if the distribution is \$500 or less and the person receiving the distribution is eligible for the partial exemption of distributions from pensions and other retirement plans described in rule 701—40.47(422) and that person has indicated an intention to file a joint state individual income tax return for the year in which the distribution is made. Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$3,000 or less and the lump-sum payment is the only distribution from the retirement plan in the year.

h.—Withholding from distributions made on or after January 1, 1999, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans. Effective for distributions made on or after January 1, 1999, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pension and other retirement plan" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a distribution from a pension plan or other retirement plan if the amount of the distribution is \$417 per month or less or if the taxable amount is \$417 per month or less and the person receiving the distribution is eligible for partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payer of the distribution. There is also no requirement for withholding state income tax from a distribution from a pension or other retirement plan if the distribution is \$834 per month or less or the state taxable amount is \$834 per month or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state individual income tax return for the year in which the distribution is made. In instances where the payment amount or taxable amount is more than \$417 per month but less than \$5,000 for the year, no state income tax will be required to be withheld. Finally, there is no requirement for

withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$5,000 or less, the recipient of the distribution is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

i h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans. Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

**46.1(3)** Voluntary state income tax withholding from unemployment benefit payments. Effective for unemployment benefit payments made on or after January 1, 1997, that pertain to a new application for benefits made after December 31, 1996, recipients of the benefits may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, 99F.18, 422.5, 422.7, and 422.16.

ITEM 2. Amend rule 701—46.2(422) as follows:

**701—46.2(422) Computation of amount withheld.**

**46.2(1)** Amount withheld.

## REVENUE DEPARTMENT[701](cont'd)

a. General rules. Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee's annual tax liability. "Payroll period" for Iowa withholding purposes shall have the same definition as in Section 3401 of the Internal Revenue Code and shall include "miscellaneous payroll period" as that term is defined and used in that section and the associated regulations thereunder.

b. Methods of computations. Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) Tables. An employer may elect to use the withholding tables provided in the Iowa employers' withholding tax guide and withholding tables, which are available from the department of revenue and finance.

(2) Formulas. Formulas that are provided in the Iowa employers' withholding tax guide and tax tables are available upon request for employers who have a computerized payroll system.

(3) Other methods. An employer may request and be granted the use of an alternate method for computing the amount of Iowa tax to be deducted and withheld for each payroll period so long as the alternate proposal approximates the employee's annual Iowa tax liability. When submitting an alternate formula, the withholding agent should explain the formula and show examples comparing the amount of withholding under the proposed formula with the department's tables or computer formula at various income levels and by using various numbers of personal exemptions. Any alternate formula must be approved by the department prior to its use.

c. Supplemental wage payments. An employee's compensation may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period or without regard to a particular period. A supplemental wage payment is the payment of a bonus, commission, overtime pay, or other special payment that is made in addition to the employee's regular wage payment in a payroll period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined by using the current withholding tables or formulas. If supplemental wages are paid at the same time as regular wages, the regular tables or formulas are used in determining the amount of tax to be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at any other time, the regular tables or formulas are used in determining the amount of tax to be withheld as if the supplemental wage were a single wage payment for the regular payroll period. See subrule 46.2(3) for withholding on supplemental wage payments made on or after January 1, 1994. When a withholding agent makes a payment of supplemental wages to an employee and the employer withholds federal income tax on a flat-rate basis, pursuant to Treasury Regulation §31.3402(g)-1, state income tax shall be withheld from the supplemental wages at a rate of 6 percent without consideration for any withholding allowances or exemptions.

d. Vacation pay. Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be

treated as supplemental wage payments. See subrule 46.2(3) for withholding on supplemental wage payments made on or after January 1, 1994.

**46.2(2)** Correction of underwithholding or overwithholding.

a. and b. No change.

c. Cross-reference. For effect on reporting and remitting taxes deducted and withheld when there is an erroneous underpayment or overpayment, see 46.3(3)"h."

**46.2(3)** Withholding on supplemental wage payments. When a withholding agent makes a payment of supplemental wages to an employee on or after January 1, 1994, and the employer withholds federal income tax on a flat-rate basis, pursuant to Treasury Regulation §31.3402(g)-1, state income tax shall be withheld from the supplemental wages at a rate of 6 percent without consideration for any withholding allowances or exemptions. A supplemental wage payment is the payment of a bonus, commission, overtime pay, or other special payment that is made in addition to the employee's regular wage payment in a payroll period.

This rule is intended to implement Iowa Code section 422.16 as amended by 1994 Iowa Acts, Senate File 2057.

ITEM 3. Amend rule 701—46.3(422) as follows:

**701—46.3(422) Forms, returns and reports.**

**46.3(1)** Employer registration. Every employer or payer required to deduct and withhold Iowa income tax must register with the department of revenue and finance by filing an "Application for Withholding Agent's Identification Number Iowa Business Tax Registration Form." The application form shall indicate the employer's or payer's federal identification number. If an employer or payer has not received a federal employer's identification number, the employer should obtain one before filing the state application. It must then be filed with the department within 15 days of the date the federal employer's identification number is assigned. The department will issue a temporary identification number. The employer or payer must notify the department when the federal employer identification number is assigned.

When initial payment of wages subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer's or payer's federal employer's identification number is assigned by the Internal Revenue Service, the application for Iowa withholding agent's identification number business tax registration form shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the application form.

**46.3(2)** Allowance certificate.

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee's withholding allowance certificate (IA W-4) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish a certificate, the employee shall be considered as claiming no withholding allowances. See subrule 46.3(4) for information on Form IA W-4P which is to be used by payers of pensions, annuities, deferred compensation, individual retirement accounts and other retirement incomes to the extent the payments of the retirement incomes are made on or after January 1, 1996.

The employer must submit to the department of revenue and finance a copy of a withholding allowance certificate received from an employee if:

## REVENUE DEPARTMENT[701](cont'd)

(1) ~~\*The employee claimed more than a total of 14 22 withholding allowances, or~~

(2) The employee is claiming an exemption from withholding and it is expected that the employee's wages from that employer will normally exceed \$200 per week.

~~\*On or after January 1, 1991, the employer is to submit the employee's allowance certificate to the department of revenue and finance if the employee claimed more than 22 allowances.~~

Employers are required to submit withholding certificates on at least a calendar quarter basis to *should use* the following address:

Iowa Department of Revenue  
Compliance Division  
Examination Section  
Hoover State Office Building  
P.O. Box 10456  
Des Moines, Iowa 50306

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding allowances.

b. Form and content. The "Iowa Employee's Withholding Allowance Certificate" (IA W-4) must be used to determine the number of allowances that may be claimed by an employee for Iowa income tax withholding purposes. Generally, the greater number of allowances an employee is entitled to claim, the lower the amount of Iowa income tax to be withheld for the employee. The following withholding allowances may be claimed on the IA W-4 form:

(1) to (3) No change.

(4) Allowances for the child/dependent care credit. ~~Effective for Iowa income taxes withheld on or after January 1, 1991, employees~~ *Employees* who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of net income shown on the Iowa return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. ~~Note that effective for state income tax withheld on or after January 1, 1994, taxpayers~~ *Taxpayers* that expect to have a net income of \$40,000 or more for the tax year should not claim withholding allowances for the child and dependent care credit, since they are not eligible for the credit.

c. and d. No change.

e. Duration of allowance certificate. An Iowa withholding allowance certificate which is in effect pursuant to these regulations shall continue in effect until another withholding allowance certificate takes effect. *Employers should retain copies of the IA W-4 forms for at least four years.*

#### **46.3(3) Reports and payments of income tax withheld.**

a. Returns of income tax withheld from wages.

(1) ~~Quarterly returns. Except as otherwise provided in 46.3(3)"a"(3) or 46.3(3)"b," every~~ *Every* withholding agent required to deduct and withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which such tax is deducted and withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The withholding agent's "Quarterly Withholding Return" is the form prescribed for making the return required under this paragraph. Monthly tax payments may also be required *deposits* or semimonthly tax payments *deposits* may be re-

~~quired instead of in addition to quarterly or monthly reports returns.~~ See subparagraphs (2) and (3) of *paragraph* 46.3(3)"a." In some circumstances, only an annual return and payment of withheld taxes will be required; see *paragraph* 46.3(3)"c."

Payments shall be based upon the tax required to be withheld and must be remitted in full. ~~Payment should not be deferred and should accompany the quarterly return.~~

A withholding agent is not required to list the name(s) of the agent's employee(s) when filing quarterly returns, nor is the withholding agent required to show on the employee's paycheck or voucher the amount of Iowa income tax withheld.

If a withholding agent's payroll is not constant, and the agent finds that no wages or other compensation was paid during the current quarter, the agent shall enter the word *numeral* "none zero" on the return, sign, and submit the return as usual.

(2) ~~Monthly reports~~ *deposits*. Every withholding agent required to file a quarterly withholding return shall also file a monthly tax payment form *deposit* if the amount of tax deducted and withheld during any calendar month exceeds \$50 \$500, but is less than \$10,000. A withholding agent needs to file a monthly form *deposit* even if no monthly payment is due. No monthly form *deposit* is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form *deposit* for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form *deposit* need be filed for such month. ~~The "Monthly Withholding Return" is provided for use with the payments required under this paragraph.~~

(3) ~~Semimonthly reports~~ *deposits*. Every withholding agent who withholds more than \$8,000 \$5,000 in a semimonthly period must file a semimonthly tax payment form, unless requirements for electronic transmission of tax payments and related information specify otherwise, instead of monthly or quarterly withholding reports *deposit*. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly reports or electronic transmission of tax payments and related information *deposits* are required, a withholding agent need not *must still* file monthly or a quarterly reports *return*. ~~The withholding agent's "Semimonthly Withholding Return" is provided for use with the payments required under this paragraph unless requirements for electronic transmission of tax payments and related information specify otherwise.~~

(4) Final returns. A withholding agent, who in any return period permanently ceases doing business, shall file the returns and statements required by subparagraphs (1), (2) and (3) of this paragraph 46.3(3)"a" as final returns for such period. Each return shall be marked "Final Return." There shall be executed as part of each final return a statement showing the date of the last payment of compensation, the address of which the information in regard to withholding will be kept, the name of the person keeping such records, and if the business of the withholding agent has been sold or otherwise transferred to another person, the name and address of such person and the date of which such sale or transfer took place. If no such sale or transfer took place or if the withholding agent does not know the name and address of the person to whom the business was sold or transferred, that fact should be included in the statement. *The withholding agent*

## REVENUE DEPARTMENT[701](cont'd)

shall cancel the withholding tax registration by notifying the department.

b. Time for filing returns.

(1) Quarterly returns. Each return required by *subparagraph* 46.3(3)"a"(1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) Monthly tax payments *deposits*. Monthly forms *deposits* required by *subparagraph* 46.3(3)"a"(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter for the first and second months of each calendar quarter, respectively.

(3) Semimonthly tax payments *deposits*. Semimonthly forms *deposits* required by *subparagraph* 46.3(3)"a"(3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month unless requirements for electronic transmission of tax payments and related information specify otherwise. The semimonthly forms *deposits* required by *subparagraph* 46.3(3)"a"(3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld unless requirements for electronic transmission of tax payments and related information specify otherwise.

For withholding that occurs on or after April 1, 1990 *January 1, 2005*, semimonthly tax payments of withholding agents required to file semimonthly *quarterly returns, amended returns, monthly deposits and semimonthly deposits* shall be made electronically in a format and by means specified by the department of revenue and finance. Semimonthly forms are not required to be filed when electronic transmission of tax payments is done in the prescribed format by specified means. Tax payments are considered to have been made on the date that the tax is added to the bank account designated by the treasurer of the state of Iowa *transmitted and released by the vendor to the department*.

(4) Determination of filing status.

1. Prior to January 1, 2003. Iowa Code section 422.16 provides, based on the amount of tax collected, how often withholding agents file deposits or returns with the department.

The department will determine if the withholding agent's current filing status is correct by reviewing the most recent four quarters of the withholding agent's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Semimonthly	\$8,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds \$48,000.
Monthly	\$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds \$150.
Quarterly	All other filers.	All other filers except annual filers. See 46.3(3)"c"(2).

When it is determined that a withholding agent's filing status is to be changed, the withholding agent will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Withholding agents may request that they be allowed to file less frequently than the filing status selected by the de-

partment, but exceptions will only be granted in two instances:

- Incorrect historical data is used in the conversion. A business may meet the criteria based on original information available, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

- Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

Exceptions will not be granted in instances where the withholding agent's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Withholding agents will be notified in writing of approval or denial of their request for reducing filing periods.

Withholding agents may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the withholding agent's request.

2. January 1, 2003, and after. Iowa Code section 422.16 provides, based on the amount of tax collected, how often withholding agents file deposits or returns with the department.

Effective July 1, 2002, the department and the department of management have the authority to change the above-mentioned filing thresholds by department rule. After review of these thresholds it has been determined that new threshold amounts are necessary and will take effect January 1, 2003. Accordingly, this *This* paragraph sets forth the filing thresholds for each filer based on the amount withheld *for withholding that occurs on or after January 1, 2003*.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Threshold	Test Criteria
Semimonthly	Greater than \$120,000 in annual withholding taxes (more than \$5,000 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$30,000.
Monthly	Between \$6,000 and \$120,000 in annual withholding taxes (more than \$500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.
Quarterly	Less than \$6,000 in annual withholding taxes.	Tax remitted in 3 of most recent 4 quarters examined is less than \$1,500 per quarter.
Annual	Less than 3 employees.	

When it is determined that a withholding agent's filing status is to be changed, the withholding agent shall be notified in writing. A withholding agent has the option of requesting, within 30 days of the department's notice of a change in filing frequency, that the withholding agent file more or less frequently than required by the department. To request filing on a less frequent basis than assigned by the department, the request must be in writing and submitted to the department. A withholding agent's written request to be allowed to file less frequently than the filing status assigned by the department will be reviewed by the department, and a written determination will be issued to the withholding agent who made the request.

## REVENUE DEPARTMENT[701](cont'd)

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

- Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
- Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A withholding agent may also request to file more frequently than assigned by the department. This request may be made orally, *in writing*, in person, or by telephone. ~~With the exception of those withholding agents who previously filed on a quarterly basis and have been changed to an annual filing frequency, any withholding agent seeking to file on a more frequent basis than assigned will be required to deposit revenues by electronic funds transfer if the department allows the withholding agent to file more frequently.~~

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

c. Reporting annual withholding.

(1) Any withholding agent who does not have employee withholding, but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of *paragraph 46.3(3)"a,"* if these distributions are made annually in one calendar quarter. These withholding agents need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld, and make the required year-end reports.

(2) Every withholding agent employing not more than two individuals and who expects to employ either or both for the full calendar year, may pay with the withholding tax return due for the first calendar quarter of the year, the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The withholding agent shall advise the ~~withholding section of the Iowa department of revenue and finance~~ that annual reporting is contemplated, and shall also state the number of persons employed. The withholding agent shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. ~~No lump sum of payment of withheld income tax shall be made without the written consent of all employee(s) involved. Consent may be affected by having the employee(s) complete the form "Iowa Employees Consent to Advance Annual Withholding."~~ The withholding agent shall be entitled to recover from the employee(s) any part of such lump-sum payment that represents an advance to the employee(s). If a withholding agent pays a lump sum with the first quarterly return, the agent shall be excused from filing further quarterly returns for the calendar year involved unless the agent hires other or additional employees. ~~Information returns and the~~ *The "Verified Summary of Payments Report"* shall be filed at the end of the tax year.

d. Reports for employee.

(1) General rule. Every employer required to deduct and withhold tax from compensation of an employee must fur-

nish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement ~~in duplicate~~ containing the following information: the name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under *subrule 46.1(1)*.

(2) Form of statement. The information required to be furnished an employee under the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as "combined W-2." Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department. *Employers should keep copies of the combined W-2 for three years from the end of the year for which the combined W-2 applies.*

(3) Time for furnishing statement. Each statement required by this section *paragraph "d"* to be furnished for a calendar year, and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or if an employee's employment is terminated before the close of a calendar year, without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee. See *paragraph 46.3(3)"e"* for provisions relating to the filing of copies of the combined W-2 with the Iowa department of revenue and finance.

(4) Corrections. An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished, an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked "corrected by the employer." See *paragraph 46.3(3)"e"* for provisions relating to the filing of a corrected combined W-2 with the department.

(5) Undelivered combined W-2. Any employee's copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee, shall be transmitted to the department with a letter of explanation.

(6) Lost or destroyed. If the combined W-2 is lost or destroyed, the employer shall furnish ~~two a~~ substitute copies *copy* to the employee and ~~one copy to the department.~~ All such copies *The copy* shall be clearly marked "Reissued by Employer."

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue and finance on or before the last day of February following the tax year a withholding information statement entitled *Annual an annual "Verified Summary of Payments Report" (VSP)*. ~~With the Verified Summary of Payments Report (VSP), the withholding agent is to provide copies of wage statement W-2 form showing Iowa income tax withheld during the tax year from payments of wages for personal services and copies of 1099 form showing Iowa income tax withheld from various types of income payments made in the tax year. See subparagraph (3) below for the Verified Summary of Payments Report forms to be filed for calendar year 2000 and for those years after 2000.~~

(2) ~~The W-2 forms and 1099 forms to be submitted with the Verified Summary of Payments Report can be provided on magnetic tape, computer printout, cartridge or diskette.~~



## REVENUE DEPARTMENT[701](cont'd)

The department of revenue and finance booklet *Income Information Return Reporting Guidelines* includes specifications for providing W-2 forms and 1099 form data to the department. The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits, *accelerated career education credits* and housing assistance credits claimed on withholding reports *returns* for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding tax remitted to the department of revenue and finance for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to *remit report* the additional withholding tax due on a *withholding an amended return and mail the submit* payment to Department of Revenue and Finance, P.O. Box 10411, Des Moines, Iowa 50306 *the department*.

However, if *If* the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue and finance by the withholding agent, the agent should file a *claim for refund an amended return* with the department *for reflecting* the excess tax paid.

(3 2) For Verified Summary of Payments Report forms filed with the department of revenue and finance for the year 2000 and for *subsequent* years after 2000, the withholding agents *filing the reports* are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue and finance, if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2000, the request is valid if the request is postmarked, faxed or made on or before December 31, 2003.

f. Withholding deemed to be held in trust. Funds withheld from wages for Iowa income tax purposes are deemed to be held in trust for payment to the Iowa department of revenue and finance. The state and *the* department shall have a lien upon all the assets of the employer and all the property used in the conduct of the employer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien may exempt the property from the lien granted to Iowa by requiring the employer to obtain a certificate from the department, certifying that such employer has posted with the department security for the payment of the amounts withheld under this rule.

g. Payment of tax deducted and withheld. The amount of tax shown to be due on each *deposit or* return required to be filed under *subrule* 46.3(3) shall be due on or before the date on which such *deposit or* return is required to be filed.

h. Correction of underpayment or overpayment of taxes withheld.

(1) Underpayment. If a return is filed for a return period under *rule* 46.3(422) and less than the correct amount of tax is reported on the return and paid to the department, the employer shall report and pay the additional amount due by *reason of the underpayment on the next quarterly return. An explanation must be attached to the return for the period in which the underpayment is corrected, and the appropriate entry made on the quarterly withholding return filing an amended withholding tax return.*

(2) Overpayment. If an employer remits more than the correct amount of tax for a return period under this rule and the overpayment is discovered in a subsequent return period under this rule and within the same calendar year of the overpayment, the employer may correct the error on a subsequent return to be filed for a period within the same calendar year. An explanation must be attached to the return on which the error is corrected. If the overpayment is discovered in a subsequent calendar year, the employer may correct the error by filing a "Claim for Refund" form with the department, *the employer must file an amended withholding tax return and report the correct amount of withholding tax due.*

**46.3(4)** Iowa W-4P—withholding certificate for pension or annuity payments. Effective for *For* payments made on or after January 1, 1996, from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payors of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld from a payment to the extent the monthly payment amount is \$250 500 or less or the taxable amount *per month* is \$250 500 or less in cases where the payor knows the taxable amount of the payment *if the payee is eligible for the retirement benefits exclusion described in rule 701—40.47(422).* In addition, no state income tax is required to be withheld to the extent the *monthly* payment amount is \$500 1,000 or less or the taxable amount of the payment *per month* is \$500 1,000 or less if the payee is *married and* eligible for the retirement benefits exclusion described in rule 701—40.47(422) and the payee indicates intention on the IA W-4P of filing a joint Iowa individual income tax return with a spouse for the tax year.

Form IA W-4P is available from the department for payors of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$3,000 6,000 to \$6,000 12,000 exclusion is considered. Note that the \$3,000 6,000 to \$6,000 12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$3,000 6,000 to \$6,000 12,000 in payments made in the year to an individual. If an individual receives retirement benefits on or after January 1, 1996, and the individual has not completed Form IA W-4P, the payor is *directed* to withhold Iowa income tax from the retirement benefit payment after a \$3,000 6,000 exclusion is allowed on an annual basis.

Payors of retirement benefits *who that* want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.

The payors are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payors cannot accept a request for exemption from the withholding of state income tax made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.

This rule is intended to implement Iowa Code sections 422.7, and 422.12C and section 422.16 as amended by 2002 Iowa Acts, House File 2622, section 6.

ITEM 4. Amend rule 701—46.4(422) as follows:

**701—46.4(422) Withholding on nonresidents.**



## REVENUE DEPARTMENT[701](cont'd)

**46.4(1)** General rules. Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit the tax to the department on all payments of Iowa income to nonresidents except payments of wages to nonresidents engaged in film production or television production made on or after January 1, 1986, described in subrule 46.4(5), income payments for agricultural commodities or products made on or after January 1, 1985, which are described in subrule 46.4(6), and deferred compensation payments, pension, and annuity payments made on or after January 1, 1992, attributable to personal services in Iowa by the nonresidents. Withholding agents should use the following methods and rates in withholding for nonresidents:

a. Wages or salaries. Use the same withholding procedures, tables, formulas, and rates as are used for residents. See rule 46.2(422). Subrule 46.4(5) is an exception to the general rule. *In addition, in accordance with the reciprocal tax agreement between Iowa and Illinois described in 701—subrule 38.13(1), Iowa withholding tax is not withheld on wages of Illinois residents who perform personal services in Iowa.*

b. Payments other than wages or salaries for tax years beginning before January 1, 1988. For tax years beginning before January 1, 1988, withholding on payments other than wages or salaries or other compensation for personal services shall be computed using the current withholding tables on gross receipts remitted to the nonresident if the withholding agent has no control over related expenses; or on net income if proper books and records are available to the withholding agent. Subrule 46.4(6) describes an exception to withholding on income payments made to nonresidents on or after January 1, 1985, for the sale of agricultural commodities or products.

c. Payments other than wages, salaries, and other compensation for personal services for tax years beginning on or after January 1, 1988. For tax years beginning on or after January 1, 1988, in lieu of using withholding tables or computer formulas to determine the amount of Iowa income tax to be withheld from payments made to nonresidents other than for salaries, wages, or other compensation for personal services, or income payments to nonresidents for agricultural commodities or products, Iowa income tax should be withheld at a rate of 5 percent of the amount of the payment. Subrule 46.4(6) describes the optional exemption from withholding of income payments made on or after January 1, 1985, to nonresidents for the sale of agricultural commodities or products.

Nonresidents who prefer to make Iowa estimate payments instead of having Iowa income tax withheld from income payments from Iowa sources should refer to subrule 46.4(3) and rule 701—49.3(422).

**46.4(2)** Income of nonresidents subject to withholding. Listed below are various types of income paid to nonresidents which are subject to withholding tax. The list is for illustrative purposes only and is not deemed to be all-inclusive.

1. to 5. No change.

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered to clients in this state.

7. No change.

8. For compensation or wages paid prior to July 6, 1990, to nonresident employees rendering regular services for interstate common carriers such as railroads, trucking firms, airlines, bus companies, towing firms, etc., in more than one

state, the wages shall be subject to Iowa withholding on that portion of the wages for services in Iowa providing more than 50 percent of the compensation paid by the carrier to such employee is earned in Iowa during the preceding calendar year. If the nonresident employee of the interstate carrier does not earn more than 50 percent of the compensation from the carrier in Iowa during the preceding calendar year, then withholding for Iowa income tax is not required. Similar provisions are likewise applicable to the wages received by nonresident employees of private property motor vehicle carriers. If the employee of the interstate common carrier or the private property carrier is a resident of Iowa, withholding on the total wages of the resident employee is required if the resident employee does not earn more than 50 percent of the compensation from the carrier in any one state. (Additional information may be obtained by referring to P.L. 91-569 as passed by the U.S. Congress and signed by the President, effective January 1, 1971.) For withholding on compensation or wages paid on or after July 6, 1990, to nonresidents or part-year residents who earn compensation in Iowa and one or more states as an employee for an interstate motor carrier or an interstate rail company, see paragraph 12 in this subrule. *Income received by a nonresident partner or shareholder of a partnership or S corporation doing business in Iowa.*

9. The Iowa gross income of a nonresident, who is employed and receiving compensation for services, shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

10. No change.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by the landlord. See subrule 46.4(6) for the exemption from withholding on incomes paid on or after January 1, 1985, to nonresidents for the sale of agricultural commodities or products.

12. Wages paid on or after July 6, 1990, to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a railway company or for a motor carrier are not taxable to Iowa. Pursuant to P.L. 101-322 the *Amtrak Reauthorization and Improvement Act of 1990*, the nonresidents in this situation are subject only to the income tax laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax. P.L. 101-322 was effective on July 6, 1990, and is the *Amtrak Reauthorization and Improvement Act of 1990*.

**46.4(3)** Nonresident certificate of release. Where a nonresident payee makes the option to pay estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue and finance, estimate tax section, to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) and payer(s), and will state the amount of income covered by the estimated tax payment. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See 701—Chapter 49 for information on making estimate payments.

**46.4(4)** Recovering excess tax withheld. A nonresident payee may recover any excess Iowa income tax withheld

## REVENUE DEPARTMENT[701](cont'd)

from income of the payee by filing an Iowa income tax return after the close of the tax year and reporting income from Iowa sources in accordance with the income tax return instructions.

**46.4(5)** Exemption from withholding of nonresidents engaged in film production or television production in this state. ~~For tax years beginning on or after January 1, 1986, nonresidents~~ *Nonresidents* engaged in film production or television production in this state are not subject to state withholding on wages earned from this activity if the nonresidents' employer has applied to the department for exemption from withholding of state income tax and the employer's application includes the following information about the nonresident employees:

- a. The employees' names.
- b. The employees' permanent mailing addresses.
- c. The employees' social security numbers.
- d. The estimated amounts the employees are to be paid for services provided by the employees in this state.

The employer's application for exemption from withholding for the nonresident employees will not be approved by the department if the employer fails to provide all the required information.

Only those nonresident employees described in the application for exemption from withholding will be covered when the application is approved by the department. If additional nonresident employees are hired after the initial application for exemption is filed, those employees should be described in an amendment to the application for exemption which must be filed with the department of revenue and finance.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the ~~Taxpayer Services Section, Compliance Division,~~ Iowa Department of Revenue, *Compliance Division, Examination Section*, Hoover State Office Building, P.O. Box 10457 10456, Des Moines, Iowa 50306.

**46.4(6)** ~~Retroactive exemption~~ *Exemption* from withholding of state income tax from income payments made to nonresidents by withholding agents for the sale of agricultural commodities or products if the withholding agents making the income payments provide the department of revenue and finance with certain information about the sales. ~~Retroactive to January 1, 1985, withholding~~ *Withholding* agents are not required to withhold state income tax from income payments made to nonresidents or representatives of the nonresidents for the sales of agricultural commodities or products, if the withholding agents provide certain information to the department of revenue and finance about the sales. The following paragraphs describe the agricultural commodities and products that are included in the exemption from withholding, specify the information needed on the sales and clarify other issues related to the exemption from withholding. Subrule 49.3(3 4) describes an election for withholding agents to make estimate payments on behalf of nonresident taxpayers for net incomes of the nonresidents from agricultural commodities or products in tax years beginning on or after January 1, 1989.

a. Agricultural commodities or products included in the exemption from withholding. Withholding agents are not required to withhold state income tax from income payments they make ~~on or after January 1, 1985,~~ to nonresidents or representatives of the nonresidents for the sale of commodity credit certificates, grain (corn, soybeans, wheat, oats, etc.), livestock (cattle, hogs, sheep, horses, etc.), domestic fowl (chickens, ducks, turkeys, geese, etc.), or any other agricul-

tural commodities or products, if the withholding agents provide the department of revenue and finance with the information specified in paragraph "b" of this subrule.

b. Information to be provided to the department ~~for years beginning in 1988~~ by withholding agents claiming exemption from withholding on income payments made to nonresidents for the sales of agricultural items. The following information is to be provided on a listing to the department of revenue and finance by withholding agents electing exemption from withholding of state income tax on income payments, made in the calendar year, ~~starting with the 1988 year,~~ to nonresidents or representatives of the nonresidents on the sales of agricultural commodities or products made in the year:

(1) Name of the nonresident (last name, first name and middle initial).

(2) Home address of the nonresident.

(3) Social security number of the nonresident.

(4) Aggregate payments made in the calendar year for the nonresident (includes payments made to a representative of the nonresident on behalf of the nonresident).

(5) ~~Nexus verification~~—Two-digit Iowa county code number of the first one of the following that applies to the nonresident:

1. County in which the nonresident owns real property or personal property.

2. County in which the nonresident leases real property or personal property.

3. County in which the nonresident has agricultural products stored or *in which* livestock was located.

4. County where the nonresident has performed custom farming activities in the year.

5. County where the nonresident has other business activities in Iowa other than merely sales activities.

If a nonresident does not own or lease property in Iowa or have other ~~nexus or~~ connection with Iowa as described in *subparagraph 46.4(6)"b"(5)*, items "3," "4," and "5," the nonresident is not subject to Iowa income tax on the income payments for agricultural commodities or products and the nonresident's income payments should not be included on the listing.

In a situation where a withholding agent is unable to get all the information that is to be provided to the department on income payments on sales of agricultural items, the agent is relieved of the requirement to withhold if the agent can provide written evidence showing an attempt was made to acquire all the information.

The listing of aggregate income payments to nonresidents with an Iowa ~~nexus connection~~ for sales of agricultural commodities and products in the calendar year should be sent to the department by the withholding agent on or before April 1 of the year following the year in which the income payments were made. In lieu of the listing, the withholding agent may compile the information on aggregate income payments to nonresidents on a magnetic tape, *diskette or other electronic reporting*, provided the ~~tape submission~~ meets departmental guidelines described in *rule 701—8.31(421,422), paragraph 8.3(1)"e."*

The listing, ~~or~~ magnetic tape or *other electronic submission* should be sent to the following address: Iowa Department of Revenue and Finance, ~~Audit and Compliance Division,~~ *Individual Examination Section*, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

A withholding agent is not exempt from withholding of state income tax on income payments to nonresidents on sales of agricultural commodities or products if the withholding agent does not provide the department of revenue and fi-

## REVENUE DEPARTMENT[701](cont'd)

finance with information on income payments made during the year by April 1 of the subsequent year.

~~c.—Information which may be required from withholding agents claiming exemption from withholding on income payments made in the 1985, 1986, and 1987 years. Withholding agents claiming exemption from withholding of state income tax on income payments made to nonresidents for sales of agricultural commodities or products in 1985, 1986, and 1987 may be required to provide the department of revenue and finance the same information on the sales transactions as was described in 46.4(6)“b,” paragraphs (1) to (5). However, the withholding agent is not to submit the information to the department unless the withholding agent receives a specific request for the information from the department of revenue and finance.~~

Withholding agents claiming exemption from withholding of state income tax from income payments made in 1985, 1986, and 1987 to nonresidents on sales of agricultural commodities and products are not exempt from withholding if the withholding agents do not provide the information on the sales transactions which is requested by the department of revenue and finance.

Claims for refund for withholding tax that was paid for income payments made in 1985, 1986, and 1987 will be approved to the extent the withholding tax was attributable to income payments to nonresidents for the sales of agricultural commodities and products and to the extent that the claims for refund were made within the statute of limitations for refunds provided in Iowa Code section 422.73. Therefore, the refund claims will be considered valid if the claims were filed within three years of the date the withholding tax was due or within one year from the time the withholding tax was paid, whichever time is later.

**46.4(7)** Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities. For tax years beginning on or after January 1, 1992, state Iowa income tax withholding is not required from payments of deferred compensation, pensions, and annuities made to nonresidents of Iowa which are attributable to personal services of the nonresidents in Iowa *since these payments are not subject to Iowa income tax. See rule 701—40.45(422) for the exclusion from Iowa income tax for these payments received by nonresidents.* However, the payments are subject to Iowa income tax except in situations where the deferred compensation, pension, or annuity was earned from personal services in Iowa by Illinois residents during the period where the Iowa-Illinois reciprocal agreement was applicable.

Effective for payments of deferred compensation, pensions and annuities made to nonresidents of Iowa on or after January 1, 1993, payers of these payments can elect to withhold Iowa income tax from the payments if the payers choose to withhold Iowa income tax and the recipients of the payments request that Iowa income tax be withheld.

This rule is intended to implement Iowa Code sections 422.15, 422.16, 422.17, and 422.73.

ITEM 5. Amend rule 701—46.6(422) as follows:

**701—46.6(422) Withholding tax credit to workforce development fund.** Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E which occurs on or after July 1, 1995, the community college which provided the training is to notify the Iowa department of economic development of the amount paid by the employer or business to the community college during the previous 12 months. The Iowa

department of economic development is to notify the department of revenue and finance of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed \$8 4 million for fiscal years beginning on or after July 1, 2000 2001. For purposes of this rule, “year” means the period from July 1, 1995, through June 30, 1996, the period from July 1, 1996, through June 30, 1997, and subsequent fiscal year periods.

This rule is intended to implement Iowa Code section 422.16A as amended by 2000 Iowa Acts, chapter 1230.

ITEM 6. Amend rule 701—46.7(422) as follows:

**701—46.7(422) ACE training program credits from withholding.** The accelerated career education (ACE) program is a training program administered by the Iowa department of economic development to provide technical training in state community colleges for employees in highly skilled jobs in the state to the extent that the training is authorized in an agreement between an employer or group of employers and a community college for the training of certain employees of the employer or group of employers. If a community college and an employer or group of employers enter into a program agreement for ACE training, a copy of the agreement is to be sent to the department of revenue and finance. No costs incurred prior to the date of the signing between a community college and an employer or group of employers may be reimbursed or are eligible for program job credits, including job credits from withholding unless the costs are incurred on or after July 1, 2000.

**46.7(1)** The costs of the ACE training program may be paid from the following sources: (a) ~~program~~

a. *Program* job credits which the employer receives on the basis of the number of program job positions agreed to by the employer for the training program; ~~;~~ (b) ~~cash~~

b. *Cash* or in-kind contributions by the employer toward the costs of the program which must be at least 20 percent of the total cost of the program; ~~;~~ (c) ~~tuition~~

c. *Tuition*, student fees, or special charges fixed by the board of directors of the community college to defray costs of the program; ~~;~~ (d) ~~guarantee~~

d. *Guarantee* by the employer of payments to be received under *paragraphs “a” and “b”* of this subrule.

This rule pertains only to the program job credits from withholding described in *paragraph “a.”*

**46.7(2)** ACE training programs financed by job credits from withholding. In situations when an employer *or group of employers* and a community college have entered into an agreement for training under the ACE program and the agreement provides that the training will be financed by credits from withholding, the amount of funding will be determined by the program ~~jobs~~ job credits identified in the agreement. Eligibility for the program job credits is based on certification of program job positions and program job wages by the employer at the time established in the agreement with the community college. An amount of up to 10 percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total amount of Iowa income tax withheld by the employer. For example, if there were 20 employees designated to be trained in the agreement

## REVENUE DEPARTMENT[701](cont'd)

and their gross wages were \$600,000, the gross program job wage would be \$600,000. Therefore, 10 percent of the gross program job wage in this case would be \$60,000, and this amount would be credited against Iowa income tax which would ordinarily be withheld from the wages of all employees of the employer and remitted to the department of revenue ~~and finance~~ on a quarterly basis. The amount credited against the withholding tax liability of the employer would be paid to the community college training the employer's employees under the ACE program. The employer may take the credits against withholding tax on returns filed with the department of revenue ~~and finance~~ until such time as the program costs of the ACE program are considered to be satisfied.

This rule is intended to implement Iowa Code sections 260G.4A ~~as amended by 2001 Iowa Acts, chapter 99,~~ and 422.16.

ITEM 7. Amend 701—Chapter 46 by adopting the following **new** rule:

**701—46.8(260E) New jobs tax credit from withholding.**

The Iowa industrial new jobs training program is a program administered by the Iowa department of economic development for projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industries. For employers that have entered into an agreement with a community college under Iowa Code chapter 260E, a credit equal to 1.5 percent of the wages paid by the employer to each employee covered by the agreement can be taken on the Iowa withholding tax return. If the amount of withholding by the employer is less than 1.5 percent of the wages paid to the employees covered by the agreement, the employer can take the remaining credit against Iowa tax withheld for other employees. The administrative rules for the Iowa industrial new jobs training program administered by the Iowa department of economic development may be found in 261—Chapter 5.

This rule is intended to implement Iowa Code section 260E.5.

ITEM 8. Amend 701—Chapter 46 by adopting the following **new** rule:

**701—46.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs.**

**46.9(1)** Supplemental new jobs credit from withholding. For eligible businesses approved by the Iowa department of

economic development under the new jobs and income program or the enterprise zone program, a credit equal to an additional 1.5 percent of the wages paid to employees in new jobs covered under these programs can be taken on the Iowa withholding tax return. This supplemental new jobs credit is in addition to the credit described in rule 46.8(260E). The administrative rules for the new jobs and income program and the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapters 58 and 59.

**46.9(2)** Alternative credit for housing assistance programs. As an alternative to the credit described in subrule 46.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing assistance program may be claimed on the Iowa withholding tax return. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

This rule is intended to implement Iowa Code sections 15.331 and 15E.196.

**NOTICE—USURY**

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%
March 1, 2004 — March 31, 2004	6.25%
April 1, 2004 — April 30, 2004	6.00%
May 1, 2004 — May 31, 2004	5.75%
June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%
January 1, 2005 — January 31, 2005	6.25%

**ARC 3918B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of 2003 Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby amends Chapter 41, "Auditing Claims," Iowa Administrative Code.

The purpose of this amendment is to eliminate the mandatory requirement to use a state contract with a specific travel agency for the purchase of airline tickets for state travel. The state will negotiate nonexclusive contracts for air travel, the use of which will be optional for state agencies and their employees. This change will allow an agency the flexibility to purchase or direct its employees to purchase airline tickets from the source determined by the agency to be the best value.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3784B**.

A public hearing was held on November 30, 2004, at 10:30 a.m., however, no one attended to offer comment. Based on public comment received from other sources, the amendment has been revised to state that agencies shall develop internal policies so that agencies purchase or direct their employees to purchase tickets from the source determined by the agency to be the best value. This change was made because some agencies do not have employees purchase their own tickets. This amendment was not intended to require that employees purchase their own tickets if that is not the agency's policy.

Pursuant to Iowa Code section 17A.5(2)"b"(2), this amendment shall become effective on January 1, 2005. The Director finds that this amendment confers a benefit on state agencies. Since air travel prices fluctuate significantly, state agencies have expressed concern about being required to use a single contract when better prices can be found. This amendment permits agencies the flexibility to purchase airline tickets for state travel from a source determined by the agency to be the best value by instituting multiple nonexclusive, optional-use contracts which will become effective January 1, 2005, with the expiration of the current travel contract.

This amendment is intended to implement 2003 Iowa Code Supplement section 8A.513.

This amendment became effective on January 1, 2005.

The following amendment is adopted.

Amend subrule 41.5(3) as follows:

**41.5(3) Purchase of tickets.**

a. All state agencies covered by the statewide travel agency ~~contract~~ *contracts shall may purchase all airline tickets through the a travel agency currently under contract. Agencies shall develop internal policies so that agencies purchase or direct their employees to purchase tickets from the source determined by the agency to be the best value.*

b. For all other tickets purchased, it shall be the employee's responsibility to purchase the ticket for whatever mode of transportation that is determined to be the most economical. Reimbursement will be made by attaching the ~~ticket a receipt~~ to the employee travel voucher. Refunds

received on any unused portion of the ticket shall be shown and deducted from the original ticket.

[Filed Emergency After Notice 12/15/04, effective 1/1/05]

[Published 1/5/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.

**ARC 3908B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2004 Iowa Acts, chapter 1175, section 120, the Department of Human Services amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program necessary to meet the federal pass-along requirements specified in Title XVI of the Social Security Act. Iowa uses the payment levels method of compliance, which requires the state to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 2.7 percent for calendar year 2005.

Changes necessary to meet federal pass-along requirements are as follows:

- Increasing the income limit for dependent relatives from \$285 per month to \$293.
- Increasing the dependent relative payment standards by \$23 per month for an eligible individual and \$31 per month for an eligible couple.
- Increasing the maximum family-life home payment \$7 per month, from \$645 to \$652.
- Increasing the family-life home personal needs allowance \$8 per month, from \$81 to \$89.
- Increasing the family-life home income limit \$15 per month, from \$726 to \$741.
- Increasing the maximum residential care per diem rate from \$25 to \$25.07.

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities by the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments also increase the residential care facility personal needs allowance \$8 per month, from \$81 to \$89.

These amendments do not provide for waivers in specified situations because they benefit the people affected by increasing payment levels and personal allowances.

The Council on Human Services adopted these amendments December 8, 2004.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2004 Iowa Acts, chapter 1175, section 120, which authorizes the Department to adopt rules without notice and public participation.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department also finds, pursuant to Iowa Code sections 17A.5(2)“b”(1) and (2), that the normal effective date of these amendments should be waived, because the rules confer a benefit and because emergency rule making is authorized by 2004 Iowa Acts, chapter 1175, section 120.

These amendments are also published herein under Notice of Intended Action as **ARC 3907B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 249 and 2004 Iowa Acts, chapter 1175, section 120.

These amendments became effective January 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

**51.4(1) Income.** Income of a dependent relative shall be less than \$285 \$293. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249), introductory paragraph, as follows:

**441—51.7(249) Income from providing room and board.** In determining profit from furnishing room and board or providing family life home care, \$285 \$293 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

ITEM 3. Amend rule 441—52.1(249) as follows:

Amend subrules 52.1(1) and 52.1(2) as follows:

**52.1(1) Protective living arrangement.** The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

\$645	\$652	Care allowance
\$81	\$89	Personal allowance
\$726	\$741	Total

**52.1(2) Dependent relative.** The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

- a. Aged or disabled client and a dependent relative . . . . . \$849 \$872
- b. Aged or disabled client, eligible spouse, and a dependent relative . . . \$1131 \$1162
- c. Blind client and a dependent relative . . . \$874 \$894
- d. Blind client, aged or disabled spouse, and a dependent relative . . . . . \$1153 \$1184
- e. Blind client, blind spouse, and a dependent relative . . . . . \$1175 \$1206

Amend subrule 52.1(3) as follows:

Amend the introductory paragraph as follows:

**52.1(3) Residential care.** Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of \$25 \$25.07. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

Amend paragraph “a,” subparagraph (2), as follows:

(2) An \$84 \$89 allowance to meet personal expenses and Medicaid copayment expenses.

[Filed Emergency 12/14/04, effective 1/1/05]

[Published 1/5/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.

**ARC 3909B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2004 Iowa Acts, chapter 1175, section 112, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments update the methodology used in determining the Medicaid eligibility and financial participation of a married person residing in a medical institution whose spouse does not live in an institution (i.e., lives in the community). Changes are as follows:

- The maximum amount of the couple's resources that may be attributed to the spouse in the community is increased from \$92,760 to \$95,100. This change affects the amount of resources counted when determining a married applicant's financial eligibility.
- The maintenance needs allowance for the community spouse is increased from \$2319 per month to \$2377.50 per month. This change affects the amount of the Medicaid recipient's income that is considered available to contribute toward the cost of care in the medical facility.

The Medicare Catastrophic Coverage Act requires that these figures shall be updated annually based on the consumer price index. The Department has received notice of these increases from the U.S. Department of Health and Human Services.

These amendments do not provide for waivers in specified situations because they provide a benefit to the couples affected. These changes lower the amount of income and resources that are countable for the spouse in the medical institution.

The Council on Human Services adopted these amendments on December 8, 2004.

The Department finds that notice and public participation on these amendments are unnecessary. Public comment is unnecessary because the Department does not have discretion in setting these amounts. The methods applied to calculate these amounts are set by federal statute, and the amounts are effective for all states. In addition, 2004 Iowa Acts, chapter 1175, section 112, subsection 6, gives the Department authority to adopt emergency rules when necessary to comply with federal Medicaid requirements. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by making cost-of-living adjustments. Emergency rule making for Medicaid is authorized by 2004 Iowa Acts, chapter 1175, section 112, subsection 6. Therefore, the Department also finds, pursuant to Iowa Code sections 17A.5(2)“b”(1) and (2), that the normal effective date of these amendments should be waived.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 249A.3.

These amendments became effective January 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend paragraph **75.5(3)“d,”** introductory paragraph, as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than \$24,000, then \$24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds ~~\$92,760~~ \$95,100, the amount over ~~\$92,760~~ \$95,100 shall be

attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

ITEM 2. Amend subparagraph **75.16(2)“d”(3)**, introductory paragraph and first unnumbered paragraph, as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~\$2319~~ \$2377.50. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above ~~\$2319~~ \$2377.50, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

[Filed Emergency 12/14/04, effective 1/1/05]

[Published 1/5/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.

## ARC 3911B

## CORRECTIONS DEPARTMENT[201]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 40, "Community-Based Corrections Administration," Iowa Administrative Code.

These amendments update language to clarify under what conditions certain employees of a judicial district department of correctional services may carry weapons on duty.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 13, 2004, as **ARC 3726B**. A public hearing was held on November 2, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public hearing, and no oral or written testimony was received.

These amendments were approved during the December 3, 2004, meeting of the Board of Corrections. Board members requested a nonsubstantive change to subrule 40.4(12) to clarify that the written standards of a judicial district department of correctional services shall specify that the firearm will be a judicial district-purchased weapon.

These amendments will become effective on February 9, 2005.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

The following amendments are adopted.

ITEM 1. Amend rule **201—40.1(905)**, definitions of "deputy director" and "immediate family," as follows:

"Deputy director" shall mean the *respective regional deputy director of the division of community services* of the department of corrections.

"Immediate family" means spouse, child, parent, sibling, natural grandparent, stepparent, legal guardian, *or* an individual with whom the *inmate offender* lived and who was responsible for the *inmate offender* while *the offender* was a minor for a period of at least one year.

ITEM 2. Amend subrule 40.4(9) as follows:

**40.4(9)** The board of directors shall annually approve the budget and action plan of the judicial district department of correctional services which shall include the projected expenditures by program and identify the following source of revenue: (a) ~~State~~ *state* purchase of services contract, (b) federal and local grants or contracts, (c) residential client fees, (d) county support, (e) interest, (f) other miscellaneous revenues.

ITEM 3. Amend subrule 40.4(10) as follows:

**40.4(10)** One or more project advisory committees shall be established in accordance with Iowa Code chapter 905. The functions of the advisory committee(s) shall include, but need not be limited to, participation in and review of the district department's planning and program activities.

ITEM 4. Amend subrule 40.4(11) as follows:

**40.4(11)** The judicial district board of directors shall decide whether to allow employees of the judicial district department of correctional services to carry a firearm while in performance of official duties. If the board allows employees to carry firearms, the judicial district board shall establish policies and ensure that procedures are developed governing the authorization of probation/parole officers *and reserve peace officers subject to Iowa Code chapter 80D* to

carry a firearm while in performance of their duties. Policy shall specify when the possession of a weapon is appropriate and who may approve authorization to carry a weapon.

ITEM 5. Amend paragraph **40.4(12)"a"** as follows:

a. Probation/parole officers *and reserve peace officers subject to Iowa Code chapter 80D* must have successfully completed the ~~community-based corrections staff safety training Iowa law enforcement academy~~ curriculum prior to receiving authorization to carry a firearm. *Probation/parole officers authorized to carry firearms prior to February 9, 2005, will be exempt from this paragraph.*

ITEM 6. Rescind paragraphs **40.4(12)"c"** and **"d"** and reletter and amend paragraphs **"e"** to **"j"** as follows:

e c. Weapons ~~will~~ *shall* not be exhibited or used except in a perilous, life-threatening situation. Drawing, pointing, or discharging *a weapon* for effect or warning is prohibited.

f d. The judicial district director shall ~~file with the deputy director for community services~~ maintain a list of all officers granted permission to carry a weapon. The list shall include the officer's name, permit number, dates of permit, place and dates of training, ~~and whether the weapon is personal or department-owned and caliber of weapon.~~

g e. Permission granting an officer the right to carry a *judicial district-purchased* weapon shall be in writing. ~~A copy shall be submitted to the department of corrections, division of community services.~~

h f. Any officer who ~~draws or discharges~~ a weapon shall submit a written report of the incident ~~to the judicial district director within 24 hours of the occurrence through the department of corrections critical incident reporting policy.~~ The judicial district director shall file a report of the incident, the investigation, and the results of the investigation with the *regional deputy director for community services* within five days of the occurrence.

i g. No officer shall be required to carry a firearm, and such refusal shall not affect job assignments, promotion consideration, or employment possibility.

j h. Firearms shall be secured under lock and key when not in use in a location inaccessible to nonauthorized personnel.

ITEM 7. Amend paragraph **40.5(3)"b"** as follows:

b. The district department shall enter and maintain information required by the department of corrections statewide database application (*ICBC ICON*). That information will include all details necessary for the department of corrections to generate accurate and timely periodic statistical reports of district department, pretrial release, presentence investigations, field services workloads, residential facility occupancy, and specially funded treatment/monitoring programs. The district department shall devise and implement local policies and procedures to provide adequate training and support of data entry personnel and other end users, regularly audit data entry accuracy and timeliness and correct inaccurate or incomplete information discovered during that auditing process.

[Filed 12/14/04, effective 2/9/05]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.



## **ARC 3923B**

### **EDUCATIONAL EXAMINERS BOARD[282]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

These amendments will align the rules with teacher quality legislation, eliminate references to community college renewal programs that are no longer necessary, and reflect acceptance, for purposes of license renewal, of college credits from a regionally accredited institution.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 13, 2004, as **ARC 3734B**. A public hearing on the amendments was held on November 2, 2004. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective February 9, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 17] is being omitted. These amendments are identical to those published under Notice as **ARC 3734B**, IAB 10/13/04.

[Filed 12/15/04, effective 2/9/05]  
[Published 1/5/05]

[For replacement pages for IAC, see IAC Supplement 1/5/05.]

## **ARC 3904B**

### **HISTORICAL DIVISION[223]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 303.1 and 303.1A, the Department of Cultural Affairs hereby adopts amended Historical Division rules, Chapter 3, "Public Records and Fair Information Practices," Iowa Administrative Code.

These amended rules clarify the procedures for the public to use to gain access to public records that have been transferred from other state agencies to the state archives of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 9, 2004, as **ARC 3423B**.

The Department sought input about the rules by holding a public hearing. No members of the public provided comments. Department staff suggested a minor change to the amendments published under Notice of Intended Action.

The Director made the following revision to the proposed amendments:

The word "bureau" was changed to "unit" in paragraph 3.2(2)"b." Paragraph 3.2(2)"b" now reads as follows:

"b. Apply to records which are developed by the state archives or any unit of the society unless those records are housed in the state archives as records having enduring value

in accordance with Iowa Code Supplement section 305.9(1); or"

The Department Director adopted these rules on December 6, 2004.

These amendments are intended to implement Iowa Code chapter 22.

These amendments will become effective February 9, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.1 to 3.17] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3423B**, IAB 6/9/04.

[Filed 12/14/04, effective 2/9/05]  
[Published 1/5/05]

[For replacement pages for IAC, see IAC Supplement 1/5/05.]

## **ARC 3905B**

### **HISTORICAL DIVISION[223]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 303.1 and 303.1A, the Department of Cultural Affairs hereby adopts amended Historical Division rules, Chapter 22, "Library and Archives Policies and Services," Iowa Administrative Code.

These amended rules clarify the public access policies and services of the Historical Division.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 9, 2004, as **ARC 3424B**.

The Department sought input about the rules by holding a public hearing. No members of the public provided comments. Department staff suggested minor changes to the amendments published under Notice of Intended Action.

The Director made the following revisions to the proposed amendments:

- The phrase "of the library and publications bureau" was stricken from the definition of "library" in rule 22.2(303). The definition now reads:

"'Library' means a unit of the state historical society of Iowa that acquires, preserves and describes printed materials."

- The phrase "of the library and publications bureau" was stricken from the definition of "special collections unit" in rule 22.2(303). The definition now reads:

"'Special collections unit' means the unit of the state historical society of Iowa that acquires, preserves and describes special collections materials."

- The term "bureau chief" was changed to the term "administrator" in two places in the last sentence of subrule 22.6(4). The last sentence of the subrule now reads:

"Use of this type of equipment with library materials is subject to approval by an administrator or designee and shall not be permitted if the administrator or designee determines that such use may damage library materials."

The Department Director adopted these rules on December 6, 2004.

These amendments are intended to implement Iowa Code chapter 303.

HISTORICAL DIVISION[223](cont'd)

These amendments will become effective February 9, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 22 title, 22.1 to 22.6] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3424B**, IAB 6/9/04.

[Filed 12/14/04, effective 2/9/05]  
[Published 1/5/05]

[For replacement pages for IAC, see IAC Supplement 1/5/05.]

## ARC 3910B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments expand eligibility for the Medicaid home- and community-based services ill and handicapped waiver. These amendments:

- Extend eligibility under the ill and handicapped waiver through the age of 24 for SSI recipients who were receiving waiver services upon reaching the age of 21.
- Provide for a higher allowable monthly cost for these consumers to include the costs of nursing and personal care services that would have been provided under the Care for Kids program if the consumer were under the age of 21.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 13, 2004, as **ARC 3722B**. Notice of Intended Action to solicit comment on the amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 3723B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice and Adopted and Filed Emergency.

These amendments do not provide for waivers in specified situations because they confer a benefit on the consumers affected. Individuals may request a waiver of eligibility policies in Chapter 83 under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 8, 2004.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

These amendments shall become effective on February 9, 2005, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend paragraph **83.2(1)“b”** as follows:

b. The person must be ineligible for Supplemental Security Income (SSI) if the person is 21 years of age or ~~over~~older, *except that persons who are receiving ill and handicapped waiver services upon reaching the age of 21 may continue to be eligible regardless of SSI eligibility until they reach the age of 25.*

ITEM 2. Amend paragraph **83.2(2)“b”** as follows:

b. *The Except as provided below, the total monthly cost of the ill and handicapped waiver services shall not exceed the established aggregate monthly cost for level of care as follows:*

<u>Skilled level of care</u>	<u>Nursing level of care</u>	<u>ICF/MR</u>
\$2,480	\$852	\$3,019

(1) *For consumers eligible for SSI who remain eligible for ill and handicapped waiver services until the age of 25 because they are receiving ill and handicapped waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the consumer would be eligible under 441—subrule 78.9(10) if still under 21 years of age.*

(2) *If more than \$500 is paid for home and vehicle modification services, the service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period.*

[Filed 12/14/04, effective 2/9/05]  
[Published 1/5/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.

## ARC 3917B

### INSURANCE DIVISION[191]

#### Adopted and Filed

Pursuant to the authority of 2004 Iowa Acts, chapter 1110, the Insurance Division hereby adopts amendments to Chapter 1, "Organization of Division," Chapter 3, "Contested Cases," and Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

These amendments are intended to implement the provisions of 2004 Iowa Acts, chapter 1110, which became effective July 1, 2004. The legislation makes investigation files of the Division confidential, but does permit the Division to share information between a consumer who files a complaint and the subject of the complaint. The legislation also clarifies the authority of the Commissioner of Insurance to issue orders to require that persons cease and desist from actions violating insurance law. The amendments are intended to bring existing rules into compliance with the new legislation.

These rules do not provide for waivers. A person seeking a waiver must petition the Division for a waiver in the manner set forth in 191—Chapter 4.

Notice of Intended Action was published in the October 27, 2004, Iowa Administrative Bulletin as **ARC 3752B**.

A public hearing was held on November 16, 2004. Several comments were received and as a result a technical correction has been made to the definition of "person." The words "fraternal beneficiary association" were changed to "fraternal benefit society."

These amendments are intended to implement 2004 Iowa Acts, chapter 1110.

These amendments will become effective February 9, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.3(10), 1.3(11), 3.32, 15.2, 15.14] is be-

INSURANCE DIVISION[191](cont'd)

ing omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3752B**, IAB 10/27/04.

[Filed 12/15/04, effective 2/9/05]  
[Published 1/5/05]

[For replacement pages for IAC, see IAC Supplement 1/5/05.]

## **ARC 3916B**

### **INSURANCE DIVISION[191]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 509 and section 505.8, the Insurance Division hereby amends Chapter 35, "Accident and Health Insurance," Iowa Administrative Code.

The amendment implements the findings of the School Health Insurance Reform Study mandated by the 2003 Legislature in 2003 Iowa Acts, Senate File 386. The amendment fortifies the Division's rules concerning self-funded health insurance plans for school districts and school district employees, especially the use of Iowa Code chapter 28E agreements that allow a group of schools to enter into a pooling mechanism for the delivery and cost of health care. The amendment strengthens the oversight of public self-funded pooling arrangements, including filing and registration guidelines, surplus requirements and financial reporting.

Notice of Intended Action was published in the November 10, 2004, Iowa Administrative Bulletin as **ARC 3802B**. A public hearing was held on December 1, 2004. No comments were received regarding the amendment. The adopted amendment is identical to that published under Notice of Intended Action.

This amendment shall become effective on February 9, 2005.

This amendment is intended to implement Iowa Code chapter 509A and 2003 Iowa Acts, Senate File 386 [chapter 83].

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [35.20] is being omitted. This amendment is identical to that published under Notice as **ARC 3802B**, IAB 11/10/04.

[Filed 12/15/04, effective 2/9/05]  
[Published 1/5/05]

[For replacement pages for IAC, see IAC Supplement 1/5/05.]

## **ARC 3915B**

### **INSURANCE DIVISION[191]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 505.8 and chapter 514D, the Insurance Division hereby amends Chapter 37, "Medicare Supplement Insurance Minimum Standards," Iowa Administrative Code.

These amendments update Chapter 37 to conform to the recently adopted amendments to the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the Medicare Supplement Insurance Minimum Standards Model Act. These amendments are required to bring Iowa regulations into compliance with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

The main focus of these amendments is to implement the provisions to Medicare supplement plans that offer an outpatient prescription drug benefit. These amendments also prescribe the manner in which insurers are to amend current policies and establish guidelines for sales on or after January 1, 2006. Two new Medicare supplement plans are created, Plans "K" and "L." The amendments strike and replace all existing outlines of coverage and disclosure documents.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 27, 2004, as **ARC 3753B**. A public hearing was held at the offices of the Insurance Division at 10 a.m. on November 16, 2004.

Several comments were received regarding technical corrections and requesting additional guidance about implementation of these amendments. The requested nonsubstantive technical changes were made for clarification.

In addition, the adopted amendments include new subrule 37.2(3), which clarifies the effective date of these amendments and gives additional guidance to issuers. Subrule 37.2(3) reads as follows:

"**37.2(3)** With respect to the changes made to this chapter to comply with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, issuers may continue to use currently approved forms, as appropriate, through December 31, 2005. Issuers may offer any authorized Medicare supplement plan upon approval by the commissioner."

These amendments do not contain a waiver provision. The Division has previously adopted a general waiver provision in 191—Chapter 4.

These amendments are intended to implement Iowa Code chapter 514D.

These amendments will become effective on February 9, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 37] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3753B**, IAB 10/27/04.

[Filed 12/15/04, effective 2/9/05]  
[Published 1/5/05]

[For replacement pages for IAC, see IAC Supplement 1/5/05.]

## **ARC 3912B**

### **PUBLIC SAFETY DEPARTMENT[661]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 237.3, subsection 3, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Iowa Code section 237.3 authorizes the State Fire Marshal to adopt rules establishing fire safety standards for facilities in which “foster care is provided by agencies.” Such facilities with six or more beds are subject to the provisions of the Fire Marshal’s rules for “residential facilities,” 661—5.607(100) through 5.613(100). Recently, staff of the Department of Human Services inquired about the applicability of these requirements to smaller facilities providing foster care. After consultation between staff of the Fire Marshal and staff of the Department of Human Services, the Fire Marshal has determined that fire safety standards should be promulgated for facilities in which agencies provide foster care to fewer than six children, but that these standards should be less stringent, and therefore less costly to implement, than the existing standards which apply to larger foster care facilities.

The rule adopted herein requires small foster care facilities to provide smoke detection, fire extinguishers, egress windows in basement rooms where children are sleeping, and other basic fire protection features. The rule would apply to any facility, including a single-family residence, in which foster care is provided to fewer than six children by an agency. It would not apply to a foster care home in which care is provided by a private individual or family, although the Fire Marshal would encourage such compliance as ensuring a desirable level of fire protection to children in private foster care.

Notice of Intended Action proposing adoption of this amendment was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3684B**. A public hearing on the proposed amendment was held on October 21, 2004. The only comment received was from staff of the Department of Human Services inquiring about the possible applicability of the rule to individual foster care homes. Such application appears to exceed the statutory authority assigned to the State Fire Marshal by Iowa Code section 237.3, subsection 3. The amendment adopted here is identical to that proposed in the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 237.3.

This amendment will become effective on March 1, 2005. The following amendment is adopted.

Adopt the following **new** rule:

**661—5.615(237C) Facilities in which foster care is provided to fewer than six children by agencies.** Any facility, including a single-family residence, within which foster care is provided by an agency to fewer than six children shall meet each of the requirements established in this rule.

**5.615(1)** Battery-operated smoke detectors shall be installed in each sleeping room and on each floor of the home and shall be installed in compliance with the manufacturer’s instructions.

**5.615(2)** Each exit and exit path shall remain clear and unobstructed at all times.

**5.615(3)** A five-pound 2A:10B:C fire extinguisher shall be installed in the primary caregiver’s sleeping room. Additional extinguishers may be provided. Each extinguisher in the facility shall be inspected yearly by a third party in accordance with NFPA Standard 10, Standard for Portable Fire Extinguishers, 2002 edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

**5.615(4)** No combustible items shall be stored within a three-foot clearance of furnaces, hot water heaters, and electrical panels.

**5.615(5)** A carbon monoxide detector shall be installed on each floor of the residence. A detector shall be installed in proximity to any gas-fired appliance. All detectors shall be installed in accordance with the manufacturer’s installation instructions.

**5.615(6)** If propane is used in the facility, a propane leak detector shall be installed in proximity to each propane-fired appliance. All detectors shall be installed in accordance with the manufacturer’s installation instructions.

**5.615(7)** An evacuation plan shall be maintained, and fire drills shall be conducted at least once every other month.

**5.615(8)** If a child is sleeping in a basement room, then an egress window shall be provided in the room. An “egress window” means an existing operable window with a clear opening area of not less than 5.7 square feet, and with a minimum opening height and width of 24 inches and 20 inches, respectively.

This rule is intended to implement Iowa Code section 237.3, subsection 3.

[Filed 12/14/04, effective 3/1/05]

[Published 1/5/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.

## ARC 3913B

### PUBLIC SAFETY DEPARTMENT[661]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby rescinds Chapter 55, “Fire Fighter Training and Equipment Funds,” and adopts new Chapter 259, “Fire Fighter Training and Equipment Funds,” Iowa Administrative Code.

The Department of Public Safety has received an appropriation each year since state fiscal year 1998 for “costs associated with the training and equipment needs of volunteer fire fighters.” While there is no corresponding language in the Iowa Code, these moneys have been included in an appropriations bill each year and have been administered by the Fire Marshal Division as the Volunteer Fire Fighter Training and Equipment Fund. Rules governing the administration of these funds have been found in 661—Chapter 55, Iowa Administrative Code. The amendments included here provide criteria for the expenditure of additional related funds provided by the Iowa General Assembly in 2003 and 2004. 2003 Iowa Acts, chapter 177, section 11, provided for \$50,000 “for the planning, design, and construction of regional [fire] training facilities.” 2003 Iowa Acts, chapter 105, now codified as Iowa Code Supplement section 100B.12, created the Paul Ryan Memorial Fire Fighter Safety Training Fund, consisting of moneys collected from the sale of fire fighter license plates and earmarked for use by the Fire Service Training Bureau to offset fire fighter training costs. 2004 Iowa Acts, chapter 1175, section 434, created the Volunteer Fire Fighter Preparedness Fund, with moneys from an income tax checkoff, to be used annually to pay the “costs of providing volunteer fire fighter training around the state and to pay the costs of providing volunteer fire fighting equipment.”

Notice of Intended Action proposing changes to implement the language regarding planning for regional fire train-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ing facilities, funds from sales of fire fighter plates, and the income tax checkoff for fire fighter training was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3481B**. A public hearing on these proposed rules was held on August 5, 2004. No comments were received at the public hearing or otherwise. The changes proposed in the Notice of Intended Action are incorporated here as proposed. However, these adopted rules differ from the Notice in that Chapter 55 is rescinded and a new Chapter 259 is adopted, containing all of the existing language of rescinded Chapter 55 and the amendments proposed in the Notice of Intended Action. This is part of an overall effort to renumber the rules of the Department of Public Safety to increase ease of access to the rules.

These amendments are intended to implement Iowa Code Supplement section 100B.12, 1998 Iowa Acts, chapter 1222, section 19(8), 2003 Iowa Acts, chapter 177, section 11, and 2004 Iowa Acts, chapter 1175, section 434.

These amendments will become effective on March 1, 2005.

The following amendments are adopted.

ITEM 1. Rescind **661—Chapter 55**.

ITEM 2. Adopt the following **new** chapter:

## CHAPTER 259

## FIRE FIGHTER TRAINING AND EQUIPMENT FUNDS

**661—259.1 to 259.100** Reserved.

## DIVISION I

## VOLUNTEER FIRE FIGHTER TRAINING AND EQUIPMENT FUND

**661—259.101(17A,77GA,ch1222) Establishment of fund.** There is established in the fire marshal division the volunteer fire fighter training and equipment fund. The fund, to the extent of appropriations made available in each state fiscal year, shall provide support for the training and equipment needs of volunteer fire fighters. Funding is available to individual fire departments for equipment and to organizations or individuals delivering training to support courses available at no cost to volunteer fire fighters receiving the training or to their respective departments.

**259.101(1)** Advisory committee. The fire marshal may establish a volunteer fire fighter training and equipment fund advisory committee of persons knowledgeable about the training and equipment needs of volunteer fire fighters and volunteer fire departments to advise on allocation of moneys from the volunteer fire fighter training and equipment fund, including the selection of recipients in competitive situations.

**259.101(2)** Reserved.

**661—259.102(17A,77GA,ch1222) Allocations.**

**259.102(1)** Administrative allocation. Each year, the fire marshal shall allocate a portion of the funds appropriated to the volunteer fire fighter training and equipment fund for administration of the fund, including personnel expenses. A portion of the administrative allocation shall be made available to the fire service training bureau to defray the cost of maintaining records of course attendance and completion by volunteer fire fighters and for related expenses.

**259.102(2)** Allocation to fire service training bureau. The fire marshal may allocate a portion of the moneys appropriated to the volunteer fire fighter training and equipment fund in any year to the fire service training bureau for the purpose of delivering training courses offered by the fire service

training bureau to volunteer fire fighters at no cost to the volunteer fire fighters or their respective fire departments.

**259.102(3)** Allocation for equipment purchases. The fire marshal may allocate a portion of the moneys appropriated to the volunteer fire fighter training and equipment fund in any year to equipment purchases for volunteer fire departments. Awards of funding to volunteer fire departments for equipment purchases shall be on a competitive basis within guidelines published in an announcement of the availability of these funds.

**259.102(4)** Allocation to community college consortium. The fire marshal may allocate a portion of the moneys appropriated to the volunteer fire fighter training and equipment fund in any year to a consortium of community colleges to deliver training to volunteer fire fighters at no cost to the fire fighters receiving this training or to their respective fire departments. These funds shall be administered in accordance with an agreement entered into between the department of public safety and community colleges pursuant to Iowa Code chapter 28E.

**661—259.103(17A,77GA,ch1222) Awards to private providers of training.** Funds appropriated each year to the volunteer fire fighter training and equipment fund which remain after the allocations set forth in rule 661—259.102(17A, 77GA,ch1222) have been implemented shall be awarded on a competitive basis to private providers of training to provide training to volunteer fire fighters at no cost to the fire fighters receiving the training or to their respective fire departments.

**259.103(1)** Funding requests. Requests for funding of training courses instructed by private persons shall be submitted to the Volunteer Fire Fighter Training and Equipment Fund, Fire Marshal Division, Department of Public Safety, 217 East 7th, Des Moines, Iowa 50319, in a format specified by the fire marshal. Requests for funding in any state fiscal year must be received on or before July 15 following the beginning of the fiscal year on July 1.

EXCEPTION: If moneys which have been previously unexpended become available for additional training courses during the course of a fiscal year, notice shall be given to certified fire service instructors of the availability of these moneys. In this event, the deadline for receiving applications shall be as stated in the notice of availability.

**259.103(2)** Instructor qualifications. Any person instructing a training course paid for by the volunteer fire fighter training and equipment fund shall be certified as a fire service instructor by the fire service training bureau or another organization recognized by the National Board on Fire Service Professional Qualifications, P.O. Box 690632, Quincy, Massachusetts 02269, or the International Fire Service Accreditation Congress, 1700 W. Tyler, Oklahoma State University, Stillwater, Oklahoma 74078-8075.

EXCEPTION: A person who has applied to the fire service training bureau for certification as a fire service instructor I and who is actively pursuing such certification may instruct a training course paid for by the volunteer fire fighter training and equipment fund, provided that the instruction is delivered under the direct supervision of a person who is currently certified as a fire service instructor I by the fire service training bureau or by another organization recognized by the National Board on Fire Service Professional Qualifications or the International Fire Service Accreditation Congress.

**259.103(3)** Course approval. Each course paid for by the volunteer fire fighter training and equipment fund must have previously been approved by the fire service training bureau. Any person who is certified as a fire service instructor I or who is actively pursuing certification as a fire service instructor

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

tor I should contact the fire service training bureau for information about the course approval process at the following address: Fire Service Training Bureau, 3100 Fire Service Rd., Ames, Iowa 50011-3100.

**259.103(4) Course availability.** Any course which is approved and funded from the volunteer fire fighter training and equipment fund must be available to any volunteer fire department in the state of Iowa.

**259.103(5) Notification.** Each person applying for monies from the volunteer fire fighter training and equipment fund for delivery of training to volunteer fire fighters shall receive notification indicating whether the request has been approved or denied. Any approval of a request for funding is contingent upon the execution of a contract between the department of public safety and the provider of the proposed training course or courses setting out specific terms and conditions for the delivery of the proposed course or courses. Any person whose request for funding is denied may appeal that decision to the commissioner of public safety by filing a written notice of appeal within 14 calendar days of the date on which the notice indicating denial of the request is dated. Appeals of denials of funding shall be treated as contested cases and processed according to the procedures set out in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement 1998 Iowa Acts, chapter 1222, section 19(8).

**661—259.104(100B) Paul Ryan memorial fire fighter safety training fund.** Funds collected from the sale of special fire fighter license plates and deposited to the Paul Ryan memorial fire fighter safety training fund shall be utilized by the fire service training bureau to defray the cost of training provided to any fire fighter currently employed by or serving as a volunteer with any fire department in Iowa. Application of these funds shall be limited to defraying the cost of training courses approved for reimbursement from the volunteer fire fighter training and equipment fund established in rule 661—259.101(17A,77GA,ch1222).

This rule is intended to implement Iowa Code Supplement section 100B.12.

**661—259.105(80GA,ch1175) Volunteer fire fighter preparedness fund.** Funds appropriated to the volunteer fire fighter preparedness fund pursuant to 2004 Iowa Acts, Senate File 2298, section 434, shall be utilized by the fire service training bureau to defray the cost of training provided to fire fighters currently serving as volunteers with any fire department in Iowa. Application of these funds shall be limited to defraying the cost of training courses approved for reimbursement from the volunteer fire fighter training and equipment fund established in rule 661—259.101(17A,77GA,ch1222).

This rule is intended to implement 2004 Iowa Acts, chapter 1175, section 434.

**661—259.106 to 259.200** Reserved.

## DIVISION II

## FIRE FIGHTING EQUIPMENT REVOLVING LOAN FUND

**661—259.201(80GA,ch177) Fire fighting equipment revolving loan fund.** There is established in the fire service training bureau in the fire marshal division the fire fighting equipment revolving loan fund.

**661—259.202(80GA,ch177) Purpose and scope.** The fire fighting equipment revolving loan fund is established to assist local fire departments to complete purchase or repairs of

equipment used in the performance of the departments' fire fighting duties, when the acquisition or repair of such equipment would be impractical in the absence of assistance from the fund. Each payment of funds from the fund to a local fire department shall be a loan awarded in compliance with rules 661—259.201(80GA,ch177) to 661—259.207(80GA,ch177), and shall be for the specific purpose established in a contract entered into between the department of public safety and either the local fire department receiving the funds; or the city, county, or township of which the fire department is a part; or another legal entity authorized to enter into legally binding commitments on behalf of the fire department.

**661—259.203(80GA,ch177) Definitions.** For purposes of rules 661—259.201(80GA,ch177) to 661—259.207(80GA,ch177), the following definitions apply:

“Default” or “in default” means that more than one payment on a loan is currently due.

“Local fire department” means a paid, volunteer, or combination fire protection service provided by a benefited fire district under Iowa Code chapter 357B or by a county, municipality or township, or a private corporate organization that has a valid contract to provide fire protection service for a benefited fire district, county, municipality, township or governmental agency. “Local fire department” does not include a military or private industrial fire department or service.

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

“PASS” means personal alert safety system.

“SCBA” means self-contained breathing apparatus.

**661—259.204(80GA,ch177) Application process.**

**259.204(1) Notice of availability of funds.** Whenever funds are available for loans through the fire fighting equipment revolving loan fund, the department shall publish notice of the availability of those funds in the Iowa Administrative Bulletin and shall notify fire service organizations, including, but not limited to, the Iowa Firemen's Association, the Iowa Fire Chiefs Association, and the Iowa Association of Professional Fire Chiefs, of the availability of those funds, the procedure for applying for loans through the program, the deadline for applying for funds, and the provisions of rules 661—259.201(80GA,ch177) to 661—259.207(80GA,ch177). All local fire departments in Iowa known to the fire service training bureau shall receive notice by mail or, when available, electronic mail. In addition, notice of availability of funds and the application procedure shall be published on the department's Web site.

EXCEPTION: No separate notice of availability of funds shall be published in the Iowa Administrative Bulletin for the initial round of loan application and review. The schedule for the initial loan application and review process is as follows:

1. The application process officially opens on January 15, 2004;
2. The deadline for submitting applications to be considered in the initial round is March 1, 2004; and
3. The target date for the fire marshal to announce decisions regarding the first round of applications is April 1, 2004.

**259.204(2) Application.** Application for a loan from the fire fighting equipment revolving loan fund shall be made on an application form provided by the fire service training bureau. A completed application shall be submitted to the fire service training bureau by the deadline specified in the notice

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

of availability of public funds and shall include any attached materials required in the instructions provided with the application form.

a. An application form shall be completed by the local fire department. The application shall include contact information, loan amount requested, purpose of the loan, statement of need, and current financial information, and any additional information specified on the application form or accompanying instructions, and shall be signed by an official authorized to enter into contracts on behalf of the local fire department.

b. In addition to the application, the following information will be required prior to loan approval:

(1) Documentation that the department requesting the loan meets the definition of a "local fire department."

(2) Financial statements showing income, expenses, assets, liabilities, and sources of income for the department requesting the loan for a three-year period prior to the loan request date.

(3) Verification that the match requirement will be met. A letter from the executive or chief financial officer of the agency funding the match requirement will normally be sufficient.

(4) A copy of the contract, bid specifications, or proposal for purchase of the equipment/apparatus to be purchased with the loan proceeds, or repair work order, if applicable.

**259.204(3) Loan application review.**

a. The fire marshal, or another staff member of the fire marshal division designated by the fire marshal, and the chief of the fire service training bureau, or another staff member of the fire service training bureau designated by the bureau chief, shall review each application for completeness and compliance with rules 661—259.201(80GA,ch177) to 661—259.207(80GA,ch177). The fire marshal may assign additional staff of the fire marshal division to review applications and may request assistance from other employees of the department of public safety in the review process.

b. The state fire service and emergency response council, or a subcommittee of the council established for this purpose, shall serve as an advisory committee to the fire marshal in the loan application review process, and shall recommend to the fire marshal funding, partial funding, or denial of each application. Recommendations regarding loan applications shall be based upon availability of funds in relation to the total funds requested by eligible applicants, documentation of need for the proposed purchase or repair, and documentation of likely ability of the local fire department applying for a loan to repay the loan.

c. Decisions to award or not to award loans shall be made by the fire marshal.

**259.204(4) Appeals.** If a local fire department's application is denied or partially funded by the fire marshal, the department may appeal the decision of the fire marshal to the commissioner of public safety using procedures for appeals set out in 661—Chapter 10.

**661—259.205(80GA,ch177) Allowable acquisitions.** Loans from the fire fighting equipment revolving loan fund may be used to acquire the following equipment or repair services with the limitations indicated:

1. Fire fighting apparatus, including pumpers, tankers, ladder trucks, hazardous materials emergency response vehicles, or rescue vehicles. Any apparatus obtained with loan funds must comply with applicable NFPA standards, as identified by the fire marshal. Loans in this category may be awarded in amounts between \$25,000 and \$150,000.

2. Personal protective equipment and communications equipment, including personal protective clothing (structural and wild land) that includes helmets, coats, boots, pants, eye protection, gloves, and protective hoods; SCBA with integrated PASS devices; and radio communications devices. Radio communications devices obtained with loan funds must be interoperable with equipment utilized by agencies with which the agency obtaining the equipment has mutual aid agreements, if such interoperable equipment is available. Equipment obtained must comply with applicable NFPA standards, as identified by the fire marshal. Loans for purchase in this category are limited to amounts between \$10,000 and \$50,000.

3. Repairs made to apparatuses identified in paragraph "1." Loans in this category are limited to amounts between \$10,000 and \$50,000.

4. Purchase of accessory equipment, including fire suppression equipment such as hoses, ladders, small fireground tools, ventilation equipment, or vehicle extrication and rescue equipment. Equipment obtained with loan funds must comply with applicable NFPA standards, as identified by the fire marshal. Loans in this category are limited to amounts between \$10,000 and \$50,000.

5. The fire marshal, acting on the advice of the fire service and emergency response council, may establish priorities for funding through the revolving loan fund. If such priorities are established, they will be included in the notice of availability of funds and shall be utilized only if the total amount of funding requested exceeds the total of funds available to loan.

**661—259.206(80GA,ch177) Eligibility requirements and restrictions.**

**259.206(1)** Any local fire department in the state of Iowa is eligible to apply for a loan.

**259.206(2)** Loan applicants shall be required to provide a 10 percent match.

**259.206(3)** All successful loan applicants shall comply fully with the fire incident reporting requirements of the fire marshal division.

**259.206(4)** No loan shall be made to a local fire department serving a population in excess of 30,000 people which will result in excess of 50 percent of the total funds loaned at any given time being loaned to local fire departments serving populations in excess of 30,000 people, unless the fire marshal finds that there are no eligible applications pending from local fire departments serving populations of 30,000 people or less.

**259.206(5)** Following approval, loan funds will be provided only after the local fire department receiving the loan submits documentation showing that the department has either acquired, contracted for, or issued a purchase order for the equipment. Disbursement of the loan shall be in the form of a warrant payable either to the local fire department and the vendor or vendors supplying the equipment or repair services, or solely to the vendor or vendors, or, with the approval of the fire marshal, solely to the local fire department receiving the loan.

**259.206(6)** A local fire department is eligible for only one loan during any five-year period or for the duration of an existing loan from this program, whichever is longer.

**259.206(7)** A local fire department that has been in default on a loan is not eligible for additional loans through this program for a period of two years beyond the time specified in subrule 259.206(6). Any prior history of defaulting on a loan from the revolving loan fund will be taken into account

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

in evaluating a department's ability to repay a loan, pursuant to subrule 259.204(3), paragraph "b."

**259.206(8)** A local fire department receiving a loan is subject to a financial audit and any operational or program audits necessary to verify compliance with any requirements or conditions of the loan.

**661—259.207(80GA,ch177) Loan origination fee and repayment schedule.**

**259.207(1)** Each approved loan shall carry an origination fee of 1 percent of the loan amount, which shall be withheld by the fire service training bureau from the original payout of the loan.

**259.207(2)** A repayment schedule for each loan shall be established at the time the loan is awarded, with a minimum of two payments per year for the duration of the loan. Generally, loans of \$50,000 or less shall be repaid within a five-year period, and loans of more than \$50,000 shall be repaid within a ten-year period, although the fire marshal may allow variations for good cause. There will be no penalty for early payment. Each payment shall be by warrant, check, or money order made payable to Fire Service Training Bureau, Iowa Department of Public Safety, and shall be clearly marked "Repayment of Loan from Fire Fighting Equipment Revolving Loan Fund."

**259.207(3)** During any period when a loan is in default, there shall be a penalty of 1.5 percent of the remaining unpaid principal of the loan per month added to the amount of the loan.

These rules are intended to implement 2003 Iowa Acts, chapter 177, section 11.

**661—259.208 to 259.300** Reserved.

## DIVISION III

## REGIONAL TRAINING FACILITY FUNDS

**661—259.301(80GA,ch177) Regional training facility funds.** 2003 Iowa Acts, chapter 177, section 11, subsection 2, appropriated \$50,000 for the "planning, design, and construction of regional training facilities in the state." This rule establishes the criteria and procedures for allocation of those funds. A training center is a location or facility where formal fire service training and educational activities take place. Training centers may consist of the following fixed facilities:

- Administrative offices
- Classrooms and laboratories
- Student support facilities (cafeteria, dressing and locker areas, storage)
- Burn building
- Smokehouse
- Drill tower
- Skills building
- Training pads with specialized training props
- Maintenance facilities

**259.301(1)** Use of funds. The funds shall be allocated for the following purposes, in priority order.

a. Development of a detailed plan, based on the existing fire service training bureau facilities plan and approval of the fire service training bureau.

b. A portion of the construction costs for a regional training center, the design of which is based on the existing fire service training bureau facilities plan and approval of the fire service training bureau.

c. To refurbish an existing training center to meet the provisions of the existing fire service training bureau facilities plan, with the approval of the fire service training bureau.

d. Development and construction of training props to be used in a training center in compliance with the fire service training bureau facilities plan and with approval of the fire service training bureau.

A copy of the fire service training bureau facilities plan may be requested from the Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50011, by telephone at 1-888-469-2374, or electronic mail at [fstbinfo@dps.state.ia.us](mailto:fstbinfo@dps.state.ia.us).

**259.301(2)** Minimum criteria. In order for an applicant to qualify for funding, all of the following criteria, as applicable, must be met:

a. The regional training center must be available for the purpose of fire service training to fire service personnel from the region in which the center is located and for training provided through the auspices of the fire service training bureau.

b. The regional training center design must meet the minimum "live fire" training elements outlined in NFPA 1001, 2002 edition, Chapter 5 (as identified for fire fighter I standards).

c. An organization that requests funding must agree to comply with applicable fire reporting requirements of the division of the state fire marshal.

d. The requested funding must be for a project for which the planning process had commenced by January 1, 2004.

**259.301(3)** Application process. An organization that wishes to apply for funds shall submit the following:

a. A letter of application explaining the funding requested and the primary purpose of the requested funding.

b. A detailed plan for the use of the funds requested.

c. Documents demonstrating compliance with the existing fire service training bureau facilities plan and the approval of the fire service training bureau for the planned facility.

d. A document that identifies the region of the state to be served, with a list of organizations that plan to participate in training offered at the planned facility.

e. Endorsement letters from the participating organizations identified within the region.

f. A plan for the sharing of the facility and related resources.

**259.301(4)** Review of applications and distribution of funds.

a. The state fire service and emergency response council, or a committee of the council, shall review the applications and recommend funding or not funding each to the fire marshal and the chief of the fire service training bureau.

b. Funds shall be equally distributed to qualified applicants.

c. Awards shall be made by the fire marshal. Any applicant that is denied funding may appeal the decision to the commissioner as a request for a contested case pursuant to rule 661—10.301(17A).

d. The fire service training bureau will audit all use of funds and compliance with all terms of the award of any moneys for regional training centers. Assistance may be provided by the finance bureau of the department of public safety.

This rule is intended to implement 2003 Iowa Acts, chapter 177, section 11.

[Filed 12/14/04, effective 3/1/05]

[Published 1/5/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/5/05.



**ARC 3914B****PUBLIC SAFETY  
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 100B.10, the Department of Public Safety hereby rescinds Chapter 59, "Volunteer Emergency Services Provider Death Benefits," and adopts a new Chapter 291, "Volunteer Emergency Services Provider Death Benefits," Iowa Administrative Code.

The Volunteer Emergency Services Provider Death Benefit Program, established by Iowa Code section 100B.11 and 661—Chapter 59, provides a death benefit to the beneficiary or beneficiaries of a volunteer emergency services provider (volunteer fire fighter, reserve peace officer, or volunteer emergency medical provider) who suffers a line-of-duty death. 2004 Iowa Acts, chapter 1063, enacted during the 2004 Session of the Iowa General Assembly, amended the eligibility provisions of the Volunteer Emergency Services Provider Death Benefit Program by changing the definition of a line-of-duty death. Since the inception of the program in 2000, a death, even if it occurred while the provider was on duty, was not considered a line-of-duty death eligible for the death benefit if it resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including a heart attack. This provision mirrored eligibility then in effect in the federal Public Safety Officers' Benefits Program, which provides line-of-duty death benefits to peace officers and fire fighters. In late 2003, a change was enacted to the federal program which provided that, with some limitations, deaths from heart attacks or strokes which occur while the service provider is on duty or within 24 hours of being on duty are line-of-duty deaths if the provider was engaged in "nonroutine stressful or strenuous physical activity within the scope of the provider's duties." The changes enacted to the state program in 2004 Iowa Acts, chapter 1063, and implemented in these amendments mirror the recent change in the federal program.

Emergency rule making was undertaken to reflect this change in the administrative rules governing the line-of-duty

death benefit provision. The Adopted and Filed Emergency amendments, published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3479B**, were effective July 1, 2004. Parallel to the emergency rule making, a Notice of Intended Action proposing adoption of the same amendments was also published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3480B**. A public hearing was held on August 5, 2004. No comments were received either at the hearing or otherwise.

The only change from the Notice is that the rules adopted here provide for a renumbering of the rules for volunteer emergency services provider line-of-duty death benefits from Chapter 59 to a new Chapter 291. This is part of a general renumbering of the administrative rules of the Department of Public Safety to make the numbering more understandable and to improve accessibility of the rules to those subject to them and to the general public. The text of the new Chapter 291 as reflected in these amendments is identical to the text of previous Chapter 59, with the amendment proposed in the Notice of Intended Action and Adopted and Filed Emergency, effective July 1, 2004, included.

These amendments are intended to implement Iowa Code section 100B.11 as amended by 2004 Iowa Acts, chapter 1063.

These amendments will become effective on March 1, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Ch 59; adopt Ch 291] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3480B** and Adopted and Filed Emergency as **ARC 3479B**, IAB 7/7/04.

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